FEDERAL ALCOHOL CONTROL ADMINISTRATION

WASHINGTON, D. C.

LEGISLATIVE HISTORY OF THE FEDERAL ALCOHOL ADMINISTRATION ACT

(PUBLIC No. 401, SEVENTY-FOURTH CONGRESS)

(H. R. 8870)

OFFICE OF THE GENERAL COUNSEL

SEPTEMBER 15, 1935

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CHRONOLOGICAL TABLE

[74th Cong., 1st Sess.]

1935

June 18 H. R. 8539 introduced by Mr. Doughton and referred to the Committee on Ways and Means. (Cong. Rec. June 18, Vol. 79, No. 125, p. 9994.)

June 19 and 20 Hearings before the Committee on Ways and Means on H. R. 8539.

July 16 H. R. 8870 introduced by Mr. Cullen and referred to the Committee on Ways and Means. (Cong. Rec. Vol. 79, No. 145, p. 11726.)

July 17 H. R. 8870 reported out to the House by Mr. Cullen without amendment and referred to the Committee of the Whole House on the State of the Union. House Report No. 1542, Federal Alcohol Control Bill (Cong. Rec., Vol. 79, No. 146, p. 11797).

July 23 H. R. 8870 made special order by H. Res. 305 and debated by the Committee of the Whole. (Cong. Rec., Vol. 79, No. 151, pp. 12176–12203.)

July 24 Debate continued by the Committee of the Whole, H. R. 8870 reported to the House with amendments, passed by House and ordered engrossed. (Cong. Rec., Vol. 79, No. 151, pp. 12259–12272.)

July 25 House notified Senate of passage of H. R. 8870 and requested Senate's concurrence. Bill referred to Committee on Finance. (Cong. Rec., Vol. 79, No. 153, pp. 12295 and 12296.)

July 26, 27, and 29 Hearings on H. R. 8870 before the Committee on Finance.

Aug. 9 H. R. 8870 reported out to the Senate by Mr. George with amendments, Senate Report No. 1215, Federal Alcohol Control Act. (Cong. Rec., Vol. 79, No. 165, p. 13234.)

Aug. 12 Senate commenced consideration of H. R. 8870 with proposed amendments. (Cong. Rec., Vol. 79, No. 166, p. 13354.)

Aug. 13 Senate continued debate on H. R. 8870 with proposed amendments; passed bill; insisted on amendments; asked for a conference; and appointed conferees. (Cong. Rec., Vol. 79, No. 167, pp. 13395–13419.)

Aug. 14 House disagreed with Senate amendments, agreed to a conference and appointed managers on the part of the House at the conference. (Cong. Rec., Vol. 79, No. 168, pp. 13511 and 13617.)

Aug. 23 Mr. Doughton presented the conference report and statement of the Managers to the House, House Report No. 1898 Revenue From Distilled Spirits. (Cong. Rec., Vol. 79, No. 176, pp. 14672–14676.)

Aug. 24 Conference Report on H. R. 8870 debated in House and adopted. (Cong. Rec., Vol. 79, No. 177, pp. 14806–14810.) H. R. 8870 enrolled and signed by Speaker (id. p. 14900). Senate notified that House had agreed to conference report (id. 14947). Conference report submitted to Senate, debated and agreed to (id. pp. 14948–14953).

Aug. 26 Senate notified Vice President had signed Enrolled Bill H. R. 8870. (Cong. Rec., Vol. 79, No. 178, p. 15036.) Committee on Enrolled Bills presented H. R. 8870 to the President for his approval (id. p. 15034).

Aug. 29 Enrolled Bill H. R. 8870 (Public No. 401) approved by the President of the United States. (Cong. Rec., Sept. 10, Vol. 79, No. 180, p. 15434.)

TABLE OF SOURCES

[All materials refer to 74th Cong., 1st Sess.]

1. Prints of Act:
   (a) H. R. 8539. In the House of Representatives, June 18, 1935. (Bill as introduced by Mr. Doughton, referred to Ways and Means Committee and ordered to be printed; see Cong. Rec. Vol. 79, No. 125, p. 9994.)
   (b) H. R. 8870. In the House of Representatives, July 16, 1935. (Bill as introduced by Mr. Cullen, referred to Ways and Means Committee and ordered to be printed; see Cong. Rec. Vol. 79, No. 145, p. 11726.)
   (c) H. R. 8870, bearing Union Calendar No. 544. In the House of Representatives, July 17, 1935. (Bill as committed to the Committee of the Whole House on the State of the Union and ordered to be printed; see Cong. Rec. Vol. 79, No. 146, p. 11797).
   (d) H. R. 8870. In the Senate of the United States, May 13 (calendar day July 25), 1935. (Bill as read twice and referred to the Committee on Finance; see Cong. Rec. 179, No. 153, p. 12296.)
   (e) H. R. 8870, bearing calendar No. 1265. In the Senate of the United States, July 29 (calendar day, August 9), 1935. (Bill as reported by Mr. George, with amendments; see Cong. Rec. Vol. 79, No. 165, p. 13234.)
   (f) H. R. 8870. In the Senate of the United States, July 29 (calendar day, August 13), 1935. (Bill as ordered to be printed with the amendments of the Senate numbered; see Cong. Rec. Vol. 79, No. 167, p. 13419.)
   (g) (H. R. 8870) Public, No. 401, Seventy-fourth Congress. "Federal Alcohol Administration Act" (as approved by the President of the United States on August 29, 1935 (Slip Law).)
2. Records of Committee Hearings:
   (a) Federal Alcohol Control Act. Hearings before the Committee on Ways and Means, House of Representatives, on H. R. 8539. June 19 and 20, 1935.
   (b) Federal Alcohol Control Act. Hearings before the Committee on Finance, United States Senate on H. R. 8870, July 26. 27, and 29, 1935.
3. Reports of Committees:
   (a) House of Representatives, Report No. 1542, Federal Alcohol Control Bill. Report submitted by Mr. Cullen, from the Committee on Ways and Means (to accompany H. R. 8870).
   (b) Senate, Report No. 1215, bearing Calendar No. 1265, Federal Alcohol Control Act. Report submitted by Mr. George, from the Committee on Finance (to accompany H. R. 8870).
   (c) House of Representatives, Report No. 1898, Revenue From Distilled Spirits. Report submitted by Mr. Doughton from the committee of conference. Conference Report (to accompany H. R. 8870) and Statement of the Managers on the Part of the House.

4. Debates in Congress:
   (a) Debate on H. R. 8870 as reported to the House of Representatives by the Committee on Ways and Means.
      July 23, 1935, Congressional Record, Vol. 79, No. 151, pages 12176–12203.
      July 24, 1935, Congressional Record, Vol. 79, No. 152, pages 12259–12272.
   (b) Debate on H. R. 8870 as reported to the Senate by the Committee on Finance.
      August 12, 1935, Congressional Record, Vol. 79, No. 166, page 13354.
      August 13, 1935, Congressional Record, Vol. 79, No. 167, pages 13395–13419.
   (c) Debate on, and agreement to, Conference Report on H. R. 8870.
      House of Representatives, August 24, 1935, Congressional Record, Vol. 79, No. 177, pages 14806–14810.
      Senate, August 24, 1935, Congressional Record, Vol. 79, No. 177, page 14947 and pages 14948–14953.

INTRODUCTORY NOTE

The Federal Alcohol Administration Act, passed by the first session of the Seventy-fourth Congress and approved by the President on August 29, 1935, was drawn to perpetuate the control of the alcoholic beverage industries formerly exercised through the Federal Alcohol Control Administration. This control was founded on provisions placed in the several codes of fair competition for these industries. The codes were established under title I of the National Industrial Recovery Act of June 16, 1933, and the Federal Alcohol Control Administration was set up by a Presidential Executive order to administer them. This method of control existed from the effective date of the twenty-first amendment to the Constitution repealing prohibition, December 5, 1933, until May 27, 1935, when the Supreme Court of the United States handed down its decision in the case of *Schechter Poultry Corporation* v. *United States*. With the latter date the codes, for practical purposes, ceased to exist and their provisions were no longer enforced.

A summary of the former code system, the need for additional Federal legislation, the national scope of the industries, and of the aims of the act itself will be found on pages 1, 2, and 3 of the report, no. 1542, on the act (H. R. 8870) of the Committee on Ways and Means of the House of Representatives. This report is annexed hereto as appendix I.

The following memorandum deals with the act, section by section. Notes are annexed to each section referring to related material found in the hearings before the Congressional committees, the various committee reports, and the debates thereon in Congress. Where this material appeared to the editor to be of unusual importance as having interpretative or explanatory value, it has been quoted in the note. For ready reference, copies of the act as reported out by the committees, together with the accompanying committee reports, and the conference report, are annexed in full as appendixes.

This memorandum was prepared by W. A. Russell of the Office of the General Counsel of the Federal Alcohol Control Administration. Although the greatest care was exercised in examining the documents in the table of sources and in selecting excerpts therefrom, it is felt that some material may possibly have been overlooked and that errors may unavoidably have been made. It is requested therefore that any omissions, errors, or corrections be brought to the attention of the Administration.

FREDERIC P. LEE,
General Counsel.

LEGISLATIVE HISTORY OF THE FEDERAL ALCOHOL ADMINISTRATION ACT

ACT IN FULL

[PUBLIC—No. 401—74TH CONGRESS]

[H. R. 8870]

AN ACT

To further protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Alcohol Administration Act."

FEDERAL ALCOHOL ADMINISTRATION

SEC. 2. (a) There is hereby created the Federal Alcohol Administration as a division in the Treasury Department.

(b) The Administration shall be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall for his services receive compensation at the rate of $10,000 per annum, together with actual and necessary traveling and subsistence expenses while engaged in the exercise of his powers and duties outside the District of Columbia. No person shall be eligible to appointment, or continue in office, as Administrator if he is engaged or financially interested in, or is an officer or director of or employed by a corporation engaged in, the production or sale or other distribution of alcoholic beverages, or the financing thereof.

(c) The Administrator shall, without regard to the civil-service laws and the Classification Act of 1923, as amended, appoint and fix the compensation and duties of such officers and employees as he deems necessary to carry out his powers and duties, but the compensation so fixed shall be subject to the approval of the Secretary of the Treasury. The Administrator is authorized to adopt an official seal, which shall be judicially noticed.

(d) The Administrator is authorized and directed to prescribe such rules and regulations as may be necessary to carry out his powers and duties. All rules and regulations prescribed by the Administrator shall be subject to the approval of the Secretary of the Treasury.

(e) Appropriations to carry out powers and duties of the Administrator shall be available for expenditures, among other purposes.

for personal services and rent in the District of Columbia and elsewhere, expenses for travel and subsistence, for law books, books of reference, magazines, periodicals, and newspapers, for contract stenographic reporting services, for subscriptions for library services, for purchase of samples for analysis or use as evidence, and for holding conferences of State and Federal liquor control officials.

(f) The Administrator may, with the consent of the department or agency affected, utilize the services of any department or other agency of the Government to the extent necessary to carry out his powers and duties and authorize officers and employees thereof to act as his agents.

(g) The provisions, including penalties, of sections 9 and 10 of the Federal Trade Commission Act, as now or hereafter amended, shall be applicable to the jurisdiction, powers, and duties of the Administrator, and to any person (whether or not a corporation) subject to the provisions of laws administered by the Administrator.

(h) The Administrator is authorized to require, in such manner and form as he shall prescribe, such reports as are necessary to carry out his powers and duties.

(i) The Administrator shall make a report to Congress, at the beginning of each regular session, of the administration of the functions with which he is charged, and shall include in such report the names and compensation of all persons employed by the Administration.

UNLAWFUL BUSINESSES WITHOUT PERMIT

SEC. 3. In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages:

(a) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported.

This subsection shall take effect sixty days after the date upon which the Administrator first appointed under this Act takes office.

(b) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits or wine so distilled, produced, rectified, blended, or bottled, or warehoused and bottled.

This subsection shall take effect sixty days after the date upon which the Administrator first appointed under this Act takes office.

(c) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of purchasing for resale at wholesale distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

This subsection shall take effect March 1, 1936.

This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under this Act.

PERMITS

SEC. 4. (a) The following persons shall, on application therefor, be entitled to a basic permit:

(1) Any person who, on May 25, 1935, held a basic permit as distiller, rectifier, wine producer, or importer issued by an agency of the Federal Government.

(2) Any other person unless the Administrator finds (A) that such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has, within five years prior to date of application, been convicted of a felony under Federal or State law or has, within three years prior to date of application, been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof; or (B) that such person is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law; or (C) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted.

(b) If upon examination of any application for a basic permit the Administrator has reason to believe that the applicant is not entitled to such permit, he shall notify the applicant thereof and, upon request by the applicant, afford him due notice and opportunity for hearing on the application. If the Administrator, after affording such notice and opportunity for hearing, finds that the applicant is not entitled to a basic permit hereunder, he shall by order deny the application stating the findings which are the basis for his order.

(c) The Administrator shall prescribe the manner and form of all applications for basic permits (including the facts to be set forth therein) and the form of all basic permits, and shall specify in any basic permit the authority conferred by the permit and the conditions thereof in accordance with the provisions of this Act. To the extent deemed necessary by the Administrator for the efficient administration of this Act, separate applications and permits shall be required by the Administrator with respect to distilled spirits, wine, and malt beverages, and the various classes thereof, and with respect to the various classes of persons entitled to permits hereunder. The issuance of a basic permit under this Act shall not operate to deprive the United States of its remedy for any violation of law.

(d) A basic permit shall be conditioned upon compliance with the requirements of section 5 (relating to unfair competition and unlawful practices) and of section 6 (relating to bulk sales and bottling), with the twenty-first amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto.

(e) A basic permit shall by order of the Administrator, after due notice and opportunity for hearing to the permittee, (1) be revoked, or suspended for such period as the Administrator deems appropriate, if the Administrator finds that the permittee has willfully violated any of the conditions thereof, provided that for a first violation of the conditions thereof the permit shall be subject to suspension only; or (2) be revoked if the Administrator finds that the permittee has not engaged in the operations authorized by the permit for a period of more than two years; or (3) be annulled if the Administrator finds that the permit was procured through fraud, or misrepresentation, or concealment of material fact. The order shall state the findings which are the basis for the order.

(f) Orders of the Administrator with respect to any denial of application, suspension, revocation, annulment, or other proceedings, shall be served (1) in person by any officer or employee of the Administration designated by the Administrator or any internal revenue or customs officer authorized by the Administrator for the purpose, or (2) by mailing the order by registered mail, addressed to the applicant or respondent at his last known address in the records of the Administrator.

(g) A basic permit shall continue in effect until suspended, revoked, or annulled as provided herein, or voluntarily surrendered; except that (1) if leased, sold or otherwise voluntarily transferred, the permit shall be automatically terminated thereupon, and (2) if transferred by operation of law or if actual or legal control of the permittee is acquired, directly or indirectly, whether by stock-ownership or in any other manner, by any person, then such permit shall be automatically terminated at the expiration of thirty days thereafter: *Provided*, That if within such thirty-day period application for a new basic permit is made by the transferee or permittee, respectively, then the outstanding basic permit shall continue in effect until such application is finally acted on by the Administrator.

(h) An appeal may be taken by the permittee or applicant for a permit from any order of the Administrator denying an application for, or suspending, revoking, or annulling, a basic permit. Such appeal shall be taken by filing, in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, within sixty days after the entry of such order, a written petition praying that the order of the Administrator be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon the Administrator, or upon any officer designated by him for that purpose, and thereupon the Administrator shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have

exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Administrator shall be considered by the court unless such objection shall have been urged before the Administrator or unless there were reasonable grounds for failure so to do. The finding of the Administrator as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Administrator may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Administrator shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall, unless specifically ordered by the court to the contrary, operate as a stay of the Administrator's order.

(i) No proceeding for the suspension or revocation of a basic permit for violation of any condition thereof relating to compliance with Federal law shall be instituted by the Administrator more than eighteen months after conviction of the violation of Federal law, or, if no conviction has been had, more than three years after the violation occurred; and no basic permit shall be suspended or revoked for a violation of any such condition thereof if the alleged violation of Federal law has been compromised by any officer of the Government authorized to compromise such violation.

UNFAIR COMPETITION AND UNLAWFUL PRACTICES

SEC. 5. It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate:

(a) Exclusive outlet: To require, by agreement or otherwise, that any retailer engaged in the sale of distilled spirits, wine, or malt beverages, purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such requirement is made in the course of interstate or foreign commerce, or if such person engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of

such requirement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce; or

(b) "Tied house": To induce through any of the following means, any retailer, engaged in the sale of distilled spirits, wine, or malt beverages, to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such person engages in the practice of using such means, or any of them, to such an extent as sustantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce: (1) By acquiring or holding (after the expiration of any existing license) any interest in any license with respect to the premises of the retailer; or (2) by acquiring any interest in real or personal property owned, occupied, or used by the retailer in the conduct of his business; or (3) by furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services, or other thing of value, subject to such exceptions as the Administrator shall by regulation prescribe, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest and the purposes of this subsection; or (4) by paying or crediting the retailer for any advertising, display, or distribution service; or (5) by guaranteeing any loan or the repayment of any financial obligation of the retailer; or (6) by extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions, as ascertained by the Administrator and prescribed by regulations by him; or (7) by requiring the retailer to take and dispose of a certain quota of any of such products; or

(c) Commercial bribery: To induce through any of the following means, any trade buyer engaged in the sale of distilled spirits, wine, or malt beverages, to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such person engages in the practice of using such means, or any of them, to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce: (1) By commercial bribery; or (2) by offering or giving any bonus, premium, or compensation to any officer, or employee, or representative of the trade buyer; or

(d) Consignment sales: To sell, offer for sale, or contract to sell to any trade buyer engaged in the sale of distilled spirits, wine, or malt beverages, or for any such trade buyer to purchase, offer to purchase, or contract to purchase, any such products on consignment

or under conditional sale or with the privilege of return or on any basis otherwise than a bona fide sale, or where any part of such transaction involves, directly or indirectly, the acquisition by such person from the trade buyer or his agreement to acquire from the trade buyer other distilled spirits, wine, or malt beverages—if such sale, purchase, offer, or contract is made in the course of interstate or foreign commerce, or if such person or trade buyer engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such sale, purchase, offer, or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce: *Provided*, That this subsection shall not apply to transactions involving solely the bona fide return of merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold; or

(e) Labeling.—To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, with respect to packaging, marking, branding, and labeling and size and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by State law and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or importer of the product; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements on the label that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; and (5) as will prevent deception of the consumer by use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, and as will prevent the use of a graphic, pictorial, or emblematic representation of any such individual or organization, if the use of

such name or representation is likely falsely to lead the consumer to believe that the product has been indorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided*, That this clause shall not apply to the use of the name of any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, wine, or malt beverages, nor to the use by any person of a trade or brand name used by him or his predecessor in interest prior to the date of the enactment of this Act; including regulations requiring, at time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported products: *Provided further*, That nothing herein nor any decision, ruling, or regulation of any Department of the Government shall deny the right of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent Office which has been used by such person or predecessors in the United States for a period of at least five years last past, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and, in the case of the use of such name or brand on any label or in any advertisement, if such qualification is as conspicuous as such name or brand.

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except pursuant to regulations of the Administrator authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

In order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection, no bottler, or importer of distilled spirits, wine, or malt beverages, shall, after such date as the Administrator fixes as the earliest practicable date for the application of the provisions of this subsection to any class of such persons (but not later than March 1, 1936, and only after thirty days' public notice), bottle or remove from customs custody for consumption distilled spirits, wine, or malt beverages, respectively, unless the bottler or importer, upon application to the Administrator, has obtained and has in his possession a certificate of label approval covering the distilled spirits, wine, or malt beverages, issued by the Administrator in such manner and form as he shall by regulations prescribe: *Provided*, That any such bottler shall be exempt from the requirements of this subsection if the bottler, upon application to the Administrator, shows to the satisfaction of the Administrator that the distilled spirits, wine, or malt beverages to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. Officers of internal revenue and customs are authorized and directed to withhold the release of such products

from the bottling plant or customs custody unless such certificates have been obtained, or unless the application of the bottler for exemption has been granted by the Administrator. The district courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory, shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in part any final action by the Administrator upon any application under this subsection; or

(f) Advertising: To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of distilled spirits, wine, or malt beverages, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations, to be prescribed by the Administrator, (1) as will prevent deception of the consumer with respect to the products advertised and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guaranties, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products advertised, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are prohibited and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), and the person responsible for the advertisement; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; (5) as will prevent statements inconsistent with any statement on the labeling of the products advertised. This subsection shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising. The prohibitions of this subsection and regulations thereunder shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, brewer, rectifier, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate.

The provisions of subsections (a), (b), and (c) shall not apply to any act done by an agency of a State or political subdivision thereof, or by any officer or employee of such agency.

In the case of malt beverages, the provisions of subsections (a), (b), (c), and (d) shall apply to transactions between a retailer or trade buyer in any State and a brewer, importer, or wholesaler of malt beverages outside such State only to the extent that the law of such State imposes similar requirements with respect to similar transactions between a retailer or trade buyer in such State and a brewer, importer, or wholesaler of malt beverages in such State, as the case may be. In the case of malt beverages, the provisions of subsections (e) and (f) shall apply to the labeling of malt beverages sold or shipped or delivered for shipment or otherwise introduced into or received in any State from any place outside thereof, or the advertising of malt beverages intended to be sold or shipped or delivered for shipment or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the law of such State imposes similar requirements with respect to the labeling or advertising, as the case may be, of malt beverages not sold or shipped or delivered for shipment or otherwise introdued into or received in such State from any place outside thereof.

The Administrator shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing regulations to carry out the provisions of this section.

BULK SALES AND BOTTLING

Sec. 6. (a) It shall be unlawful for any person—

(1) To sell or offer to sell, contract to sell, or otherwise dispose of distilled spirits in bulk except, under regulations of the Administrator, for export or to the following, or to import distilled spirits in bulk except, under such regulations, for sale to or for use by the following: A distiller, rectifier of distilled spirits, person operating a bonded warehouse qualified under the internal-revenue laws or a class 8 bonded warehouse qualified under the customs laws, a winemaker for the fortification of wines, a proprietor of an industrial alcohol plant, or an agency of the United States or any State or political subdivision thereof.

(2) To sell or offer to sell, contract to sell, or otherwise dispose of warehouse receipts for distilled spirits in bulk unless such warehouse receipts require that the warehouseman shall package such distilled spirits, before delivery, in bottles labeled and marked in accordance with law, or deliver such distilled spirits in bulk only to persons to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk.

(3) To bottle distilled spirits unless the bottler is a person to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk.

(b) Any person who violates the requirements of this section shall, upon conviction thereof, be fined not more than $5,000 or imprisoned for not more than one year or both, and shall forfeit to the United States all distilled spirits with respect to which the violation occurs and the containers thereof.

(c) The term "in bulk" means in containers having a capacity in excess of one wine gallon.

PENALTIES

SEC. 7. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory, of the District where the offense is committed or threatened or of which the offender is an inhabitant or has his principal place of business, are hereby vested with jurisdiction of any suit brought by the Attorney General in the name of the United States, to prevent and restrain violations of any of the provisions of this Act. Any person violating any of the provisions of sections 3 or 5 shall be guilty of a misdemeanor and upon conviction thereof be fined not more than $1,000 for each offense. Subject to the approval of the Attorney General, the Administrator is authorized, with respect to any violation of this Act, to compromise the liability arising with respect to such violation (1) upon payment of a sum not in excess of $500 for each offense, to be collected by the Administrator and to be paid into the Treasury as miscellaneous receipts, and (2) in case of repetitious violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation that the United States may, on its own motion upon five days' notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation.

INTERLOCKING DIRECTORATES

SEC. 8. (a) Except as provided in subsection (b), it shall be unlawful for any individual to take office, after the date of the enactment of this Act, as an officer or director of any company, if his doing so would make him an officer or director of more than one company engaged in business as a distiller, rectifier, or blender of distilled spirits, or of any such company and of a company which is an affiliate of any company engaged in business as a distiller, rectifier, or blender of distilled spirits, or of more than one company which is an affiliate of any company engaged in business as a distiller, rectifier, or blender of distilled spirits, unless, prior to taking such office, application made by such individual to the Administrator has been granted and after due showing has been made to him that service by such individual as officer or director of all the foregoing companies of which he is an officer or director together with service in the company with respect to which application is made will not substantially restrain or prevent competition in interstate or foreign commerce in distilled spirits. The Administrator shall, by order, grant or deny such application on the basis of the proof submitted to him and his finding thereon. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in part any final action by the Administrator upon any application under this subsection.

(b) An individual may, without regard to the provisions of subsection (a), take office as an officer or director of a company described in subsection (a) while holding the position of officer or director of

any other such company if such companies are affiliates at the time of his taking office and if—

(1) Such companies are affiliates on the date of the enactment of this Act; or

(2) Each of such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the law of such State; or

(3) One or more such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the laws of such State, and the other one or more of such companies not so organized, is in existence on the date of the enactment of this Act; or

(4) One or more of such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the law of such State, and not more than one of such companies is a company which has not been so organized and which has been organized after the date of the enactment of this Act.

(c) As used in this section, the term "company" means a corporation, joint stock company, business trust, or association, but does not include any agency of a State or political subdivision thereof or any officer or employee of any such agency.

(d) Any individual taking office in violation of this section shall be punished by a fine of not exceeding $1,000.

DISPOSAL OF FORFEITED ALCOHOLIC BEVERAGES

SEC. 9. (a) All distilled spirits, wine, and malt beverages forfeited, summarily or by order of court, under any law of the United States, shall be delivered to the Secretary of the Treasury to be disposed of as hereinafter provided.

(b) The Secretary of the Treasury shall dispose of all distilled spirits, wine, and malt beverages which have been delivered to him pursuant to subsection (a)—

(1) By delivery to such Government agencies as, in his opinion, have a need for such distilled spirits, wine, or malt beverages for medicinal, scientific, or mechanical purposes; or

(2) By gift to such eleemosynary institutions as, in his opinion, have a need for such distilled spirits, wine, or malt beverages for medicinal purposes; or

(3) By destruction.

(c) No distilled spirits, wine, or malt beverages which have been seized under any law of the United States, may be disposed of in any manner whatsoever except after forfeiture and as provided in this section.

(d) The Secretary of the Treasury is authorized to make all rules and regulations necessary to carry out the provisions of this section.

FEDERAL ALCOHOL CONTROL ADMINISTRATION

SEC. 10. The Federal Alcohol Control Administration established by Executive order under the provisions of Title I of the National Industrial Recovery Act is hereby abolished. All papers, records, and property of such Federal Alcohol Control Administration are hereby transferred to the Administrator. This section shall take effect on the date that the Administrator first appointed under this Act takes office.

SEC. 11. Section 610 of the Revenue Act of 1918, as amended (U. S. C., Supp. VII, title 26, sec. 1310), is amended by adding at the end thereof the following new paragraph:

"The provisions of the internal-revenue laws applicable to natural wine shall apply in the same manner and to the same extent to citrus-fruit wines which are the product of normal alcoholic fermentation of the juice of sound ripe citrus fruit (except lemons and limes), with or without the addition of dry cane, beet, or dextrose sugar (containing, respectively, not less than 95 per centum of actual sugar, calculated on a dry basis) for the purpose of perfecting the product according to standards, but without the addition or abstraction of other substances, except as may occur in the usual cellar treatment of clarifying or aging."

SEC. 12. Section 612 of the Revenue Act of 1918, as amended (U. S. C., Supp. VII, title 26, sec. 1301), is amended to read as follows:

"SEC. 612. That under such regulations and official supervision and upon the giving of such notices, entries, bonds, and other security as the Commissioner, with the approval of the Secretary, may prescribe, any producer of wines defined under the provisions of this title may withdraw from any fruit distillery or special bonded warehouse grape brandy, or wine spirits, for the fortification of such wines on the premises where actually made, and any producer of citrus-fruit wines may similarly withdraw citrus-fruit brandy for the fortification of citrus-fruit wines on the premises where actually made: *Provided*, That there shall be levied and assessed against the producer of such wines or citrus-fruit wines a tax (in lieu of the internal-revenue tax now imposed thereon by law) of 20 cents per proof gallon of grape brandy, citrus-fruit brandy, or wine spirit whenever withdrawn and hereafter so used by him in the fortification of such wines or citrus-fruit wines during the preceding month, which assessment shall be paid by him within ten months from the date of notice thereof: *Provided further*, That nothing contained in this section shall be construed as exempting any wines, citrus-fruit wines, cordials, liqueurs, or similar compounds from the payment of any tax provided for in this title.

"Any such wines or citrus-fruit wines may, under such regulations as the Secretary may prescribe, be sold or removed tax free for the manufacture of vinegar, or for the production of dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume.

"The taxes imposed by this section shall not apply to dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume."

SEC. 13. Section 613 of the Revenue Act of 1918, as amended (U. S. C., Supp. VII, title 26, sec. 1300 (a) (2)), is amended by inserting after "grape brandy" a comma and the following: "or containing citrus-fruit wine fortified with citrus-fruit brandy".

SEC. 14. Section 42 of the Act entitled "An Act to reduce the revenue and equalize duties on imports, and for other purposes", approved October 1, 1890, as amended (U. S. C., Supp. VII, title 26, sec. 1302 (a)), is amended by inserting at the end thereof the following new paragraph:

"The provisions of this section and section 43 shall apply to the use of citrus-fruit brandy in the preparation of fortified citrus-fruit wines in the same manner and to the same extent as such provisions apply to the use of wine spirits in the fortification of sweet wines, except that no brandy (other than a citrus-fruit brandy) may be used in the fortification of citrus-fruit wine and a citrus-fruit brandy prepared from one kind of citrus fruit may not be used for the fortification of a citrus-fruit wine prepared from another kind of citrus fruit or for the fortification of a wine prepared from any fruit other than citrus fruit."

SEC. 15. Section 3255 of the Revised Statutes, as amended (U. S. C., Supp. VII, title 26, sec. 1176), is amended to read as follows:

"SEC. 3255. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may exempt distillers of brandy made exclusively from apples, peaches, grapes, oranges, pears, pineapples, apricots, berries, plums, pawpaws, persimmons, prunes, figs, cherries, dates, or citrus fruits (except lemons and limes) from any provision of the internal-revenue laws relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: *Provided*, That where, in the manufacture of wine or citrus-fruit wine, artificial sweetening has been used, the wine, or the fruit pomace residuum thereof, or the citrus-fruit wine may be used in the distillation of brandy or citrus-fruit brandy, as the case may be, and such use shall not prevent the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, from exempting such distiller from any provision of the internal-revenue laws relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: *And provided further*, That the distillers mentioned in this section may add to not less than five hundred gallons (ten barrels) of grape cheese not more than five hundred gallons of a sugar solution made from cane, beet, starch, or corn sugar, 95 per centum pure, such solution to have a saccharine strength of not to exceed 10 per centum, and may ferment the resultant mixture on a winery or distillery premises, and such fermented product shall be regarded as distilling material."

SEC. 16. (a) Section 1 of the Act of March 3, 1877, as amended (U. S. C., Supp. VII, sec. 1250), is amended by striking out "not exceeding ten in numbers in any one collection-district," and by inserting at the end of such section the following new paragraph:

"The Commissioner of Internal Revenue, under such regulations as he may promulgate from time to time with the approval of the

Secretary of the Treasury, may, in his discretion, establish such warehouses adjacent to distilleries, and may, in his discretion, permit the removal of brandy directly from the distillery to such warehouses, and from such warehouses to the distillery warehouse of the producing distiller."

(b) Section 51 of the Act of August 27, 1894, as amended (U. S. C., Supp. VII, sec. 1265), is amended by striking out "not exceeding ten in number in any one collection district," and by inserting at the end of such section the following new paragraph:

"The Commissioner of Internal Revenue, under such regulations as he may promulgate from time to time with the approval of the Secretary of the Treasury, may, in his discretion, establish such warehouses adjacent to distilleries, and may, in his discretion, permit the removal of spirits directly from the distillery to such warehouses, and from such warehouses to the distillery warehouse of the producing distiller."

MISCELLANEOUS

SEC. 17. (a) As used in this Act—

(1) The term "Administrator" means the head of the Federal Alcohol Administration.

(2) The term "United States" means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means Alaska, Hawaii, and Puerto Rico.

(3) The term "interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(4) The term "person" means individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof; and the term "trade buyer" means any person who is a wholesaler or retailer.

(5) The term "affiliate" means any one of two or more persons if one of such persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of the other or others of such persons; and any one of two or more persons subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

(6) The term "distilled spirits" means ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use.

(7) The term "wine" means (1) wine as defined in section 610 and section 6171 of the Revenue Act of 1918, (U. S. C., title 26, secs. 441 and 444) as now in force or hereafter amended, and (2) other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine,

vermouth, cider, perry and sake; in each instance only if containing not less than 7 per centum and not more than 24 per centum of alcohol by volume, and if for non-industrial use.

(8) The term "malt beverage" means a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

(9) The term "bottle" means any container, irrespective of the material from which made, for use for the sale of distilled spirits, wine, or malt beverages at retail.

(b) The right to amend or repeal the provisions of this Act is expressly reserved.

(c) If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Approved, August 29, 1935.

ACT BY SECTIONS

AN ACT

To further protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes.

NOTE.—Title of the Act was amended on the floor of the Senate to eliminate the mention of malt beverages; see note to section 3 (Cong. Rec., vol. 79, no. 167, p. 13419).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act may be cited as the "Federal Alcohol Administration Act."

NOTE.—In the bill as originally introduced in the House (H. R. 8539) the first section provided for the levying of an occupational tax of $10 per annum on importers, sellers of liquor in interstate or foreign commerce, distillers, wine producers, brewers, rectifiers, blenders, wholesalers, and other holders of permits provided for in the bill. The provisions of law relating to the levy, collection, and payment of existing occupational taxes were made to apply to the taxes imposed by the section (H. R. 8539, print dated June 18, 1935, pp. 1–3). Mr. Choate, Director of the Federal Alcohol Control Administration, while testifying at the hearings before the House Ways and Means Committee on the proposed bill raised two objections to this section; first, that it was a flat tax imposing no greater burden upon the largest industry member than upon the smallest member of the smallest industry; and second, that the revenue raised by the tax would be entirely insufficient to maintain the Federal agency created by the act (record of Ways and Means Committee hearing on H. R. 8539, p. 8). At a later session of the same hearings Congressman Celler of New York, appearing as a witness, raised the objection that occupational taxes had already been levied on distillers, rectifiers, brewers, and wholesalers, and that therefore the section would cause a duplication of taxes (id. p. 88). The section appeared in the bill as introduced by Congressman Cullen (H. R. 8870, print dated July 16, 1935). The bill as reported out by the Ways and Means Committee still contained the occupational tax provision (H. R. 8870, print dated July 17, 1935, bearing Union Cal-

endar No. 544), and this section is referred to in the committee's report (H. Rept. No. 1542, Federal Alcoholic Control Bill, p. 4). In the discussion of the bill before the House sitting as the Committee of the Whole, Congressman Cullen informed Congressman Celler that the section would be eliminated by amendment (Cong. Rec., vol. 79, no. 151, p. 12182, July 23, 1935). Congressman McCormack, a member of the committee, offered an amendment which he stated he understood to be agreeable to the committee striking out this section. The amendment was agreed to after a short discussion as to the reason for the incorporation of the section of the bill. Mr. Cullen offered the present language in lieu of the matter stricken out by Mr. McCormack's amendment (id. p. 12190, and p. 12191).

This section was read in the Senate in its present form (H. R. 8870, print dated July 25, 1935). In view of the fact that the Senate Finance Committee recommended that the bill be administered by a commission rather than by an administration, the Senate amended the short title of the bill to "Federal Alcohol Control Act" (H R. 8870, print dated Aug. 9, bearing Calendar No. 1265; S. Rept. No. 1215, Federal Alcoholic Control Act; Cong. Rec., vol. 79, no. 167, p. 13395). The former wording was replaced due to the Senate's receding from its amendment at the suggestion of the conferees, (H. Rept. No. 1898, Revenue From Distilled Spirits, p. 1 and p. 8).

FEDERAL ALCOHOL ADMINISTRATION

SEC. 2. (a) There is hereby created the Federal Alcohol Administration as a division in the Treasury Department.

NOTE.—It was recommended by the F. A. C. A. that an independent agency be created to administer the act. Mr. Choate, in testifying before the Ways and Means Committee of the House, gave the following arguments for his belief that an independent agency should be established: First, that the administrative officer was endowed by the bill with complete responsibility for the execution of the powers and duties imposed by the bill and should also be given complete and final authority to carry out his powers; second, that the Treasury's function has always been the collection of the revenue and that it is not suited to the regulation of the liquor industry for the correction of social evils, governmental problems, and the industry's own economic welfare; third, that the Secretary of the Treasury would be subjected to great pressure to give the final decision on questions he could not be qualified to answer; fourth, that agencies of the Government with quasijudicial functions should be, and generally are, independent and are not subjected to executive control; and fifth, that the authority and prestige of the agency over the industry, through suggestions and advice, would be curtailed.

Mr. Vinson, a member of the committee, in support of the committee's position stated that the bill was, at least in part, concerned with the protection of the revenue, that all regulation of the liquor industry should issue from one department and that conflicting regulations and rulings would be avoided and the other benefits resulting from a united control would be secured by putting the new

act in the Treasury Department (record of hearing on H. R. 8539, pp. 13–20, 22–24). The Secretary of the Treasury was of the opinion that the duties imposed on the new agency were such that it should not be made a part of the Treasury Department (id. Mr. Graves, Assistant to the Secretary of the Treasury, pp. 29–31, Mr. Hester of the Treasury Department, pp. 42–43). At these same hearings Congressman O'Malley, appearing as a witness, said that he favored placing the new agency in the Treasury to get rid of "a lot of red tape and cockeyed regulations", to get liquor down to a reasonable price, and to enable small units to get into the liquor industry (id. p. 98). The committee referred to the creation of the new agency in its report as follows:

> Section 2 establishes a Federal Alcohol Administration which is to be a division in the Treasury Department. The name of the organization is fixed so as to avoid confusion with the Federal Alcohol Control Administration created under the authority of the National Industrial Recovery Act. The latter organization is abolished under section 8 of the bill, and its papers, records, and property are transferred to the new agency. The abolition and transfer are postponed, however, until the Administrator who is to head the new organization takes office (H. Rept. No. 1542, Federal Alcohol Control Bill, p. 5).

At the hearings before the Senate Finance Committee, Mr. Choate again objected to the incorporation of the new agency into the Treasury Department (record of Senate Finance Committee hearings on H. R. 8870, pp. 1–5). He stated that no economies would be effectuated by this plan and also seemed to favor an agency headed by a commission or board rather than by a single man. Mr. Choate's position was supported by Mr. Lourie, executive secretary of the National Association of Alcoholic Beverage Importers. Because of the enormous powers given to the Administrator and because the functions of the new agency are so far separated from those of the Secretary of the Treasury he stated that the responsibility should be placed in a separate organization responsible only to the President and to the Congress (id. p. 102). The Senate Finance Committee in its report recommended the establishment of an independent agency headed by a commission and gave the following reasons for its position:

> The House bill (sec. 2) established the Federal Alcohol Administration as a division of the Treasury Department. The Administrator was to be appointed by the President, by and with the advice and consent of the Senate, but his rules and regulations were subject to the approval of the Secretary of the Treasury. The compensation of his employees was subject to like approval. Both the Treasury Department and the Federal Alcohol Control Administration vigorously opposed these provisions on the ground that while the provisions of the bill would be of great assistance in preventing evasion of taxes and facilitating collection of the revenue, the provisions did not involve the levying and collection of taxes which is the Treasury Department's sole function with regard to liquor. The provisions of the House bill were also opposed on the

ground that authority and responsibility were divorced under the set-up proposed and that thereby sound and efficient administration would be seriously hampered (S. Rept. No. 1215, Federal Alcohol Control Act, pp. 3–4).

The Finance Committee recommended that subsections 2 (a) b) (c) and (d) of the House bill (H. R. 8870) be amended to read s follows:

FEDERAL ALCOHOL COMMISSION

SEC. 2. (a) There is hereby established a commission to be known as the Federal Alcohol Commission, to be composed of three commissioners, who shall be appointed by the President by and with the advice and consent of the Senate. The terms of office of the commissioners first taking office shall expire, as designated by the President at the time of nomination, one at the end of the first year, one at the end of the second year, and one at the end of the third year after the date of the enactment of this Act. A successor shall have a term of office expiring 3 years from the date of expiration of the term for which his predecessor was appointed, except that a person appointed to fill a vacancy occurring prior to the expiration of such term shall be appointed for the remainder of such term. No person shall be eligible for appointment as a commissioner or continue in office as a commissioner if he is engaged or financially interested in, or is an officer or director of or employed by a company engaged in, the production or sale of alcoholic beverages or the financing thereof. Each commissioner shall, for his services; receive compensation at the rate of $10,000 per annum, together with actual and necessary traveling and subsistence expenses while engaged in the performance of his duties as commissioner outside the District of Columbia.

(b) As designated by the President at the time of nomination: One of the commissioners shall be chairman of the commission and shall be the chief executive officer of the commission; another of the commissioners shall be vice chairman of the commission and shall perform the functions and duties of the chairman in his absence or in the event of his incapacity caused by illness; and the third commissioner, who shall be a lawyer, shall be general counsel of the commission. The commission may function notwithstanding vacancies, and a majority of the commissioners in office shall constitute a quorum. The commission shall meet at the call of the chairman or a majority of its members. The commission is authorized to adopt an official seal, which shall be judicially noticed. The commission shall be entitled to free use of the United States mails in the same manner as the Executive departments.

(c) The commission shall, without regard to the civil-service laws, but subject to the Classification Act of 1923, as amended, appoint and fix the compensation and prescribe the duties of such officers and employees as may be necessary to carry out its powers and duties; except that any such officer or employee

receiving a salary at the rate of $5,000 or more per annum shall be appointed by the President, by and with the advice and consent of the Senate.

(d) The commission is authorized and directed to prescribe such rules and regulations as may be necessary to carry out its powers and duties.

The committee's suggested amendment was adopted by the Senate with two minor changes. Senator McNary offered an amendment, which was adopted without discussion, to insert after the first sentence of the amended subsection 2 (a) the sentence "Not more than two members of the Commission shall be members of the same political party" (Cong. Rec., vol. 79, no. 167, pp. 13413–13414). Senator George, of the Finance Committee, suggested that after the words "or sale" in the fourth sentence of the amended subsection 2 (a) be inserted the words "or other distribution." This amendment was also adopted without discussion (id., pp. 13395–13396). The Senate's changing the agency from an administrator subject to the Treasury to an independent commission necessitated numerous other changes of a purely clerical nature. These changes will not be discussed here, as they involve the form of the bill alone and are not matters of substance (H. R. 8870, print dated Aug. 13, 1935, with Senate amendments numbered). The conferees agreed that the Senate should recede from its amendments relating to an independent agency. The following excerpt from the statement of the Managers on the Part of the House shows the result of the conference with respect to this matter:

> Amendment no. 2: The House bill created the Federal Alcohol Administration as a division in the Treasury Department. The Administration was to be headed by an Administrator appointed by the President, by and with the advice and consent of the Senate. Appointments of officers and employees by the Administrator were to be made without regard to the civil-service laws and the Classification Act of 1923, as amended, but their compensation was subject to the approval of the Secretary of the Treasury. All rules and regulations prescribed by the Administrator were subject to the approval of the Secretary of the Treasury. The Senate amendment establishes in lieu of the Federal Alcohol Administration provided in the House bill an independent agency to be known as the "Federal Alcohol Commission", to be composed of three commissioners appointed by the President, by and with the advice and consent of the Senate. It provides that not more than two members of the Commission shall be members of the same political party. The amendment further provides that one of the Commissioners shall be chairman of the Commission, and shall be its chief executive officer; another Commissioner shall be vice chairman of the Commission; and a third Commissioner, who shall be a lawyer, shall be general counsel of the Commission. Under the Senate amendment, appointments by the Commission are made without regard to the civil-service laws but subject to the Classification Act of 1923, as amended, and any officer or employee receiving a salary at the rate of $5,000 or more per annum

is required to be appointed by the President, by and with the advice and consent of the Senate. All officers and employees of the Commission receiving less salary are to be appointed by the Commission and the Commission is to prescribe the duties of all its officers and employees irrespective of their method of appointment. The Senate recedes.

Amendments nos. 3, 5, 6, 7, 8, 9, 10, 11, 12, 17, 21, 23, 27, 29, 30, 31, 32, 33, 34, 35, 36, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 76, 77, 87, 95, 96, 107, 110, 113, 115, 116, 117, 118, 120, 122, 124, 125, 131, 134, 136, 138, 139, 140, 141, 142, 145, 148, 149, and 154: These amendments are clerical amendments made necessary by reason of Senate amendment no. 2. The Senate recedes in conformity with the action on amendment no. 2 (H. Rept. No. 1898, Revenue From Distilled Spirit, pp. 8 and 9, numbers refer to numbered amendments in H. R. 8870, print dated Aug. 13 with Senate amendments numbered).

In the discussion of the conference report before the House, Congressman Doughton, Chairman of the Ways and Means Committee and one of the House Managers, stated:

> The setting up of an independent agency was one of the important changes made in the bill by the Senate. The House put the administration of the law in the Treasury Department, and the Senate put it under an independent agency. That was one provision in the House bill that the House conferees insisted on. Every member of the Committee on Ways and Means was insistent on that provision. The Senate very reluctantly yielded on that vital amendment (Cong. Rec., vol. 79, no. 177, p. 14808, Aug. 24, 1935).

(b) The Administration shall be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall for his services receive compensation at the rate of $10,000 per annum, together with actual and necessary traveling and subsistence expenses while engaged in the exercise of his powers and duties outside the District of Columbia. No person shall be eligible to appointment, or continue in office, as Administrator if he is engaged or financially interested in, or is an officer or director of or employed by a corporation engaged in, the production or sale or other distribution of alcoholic beverages, or the financing thereof.

NOTE.—In the original bill introduced before the House on June 18, 1935, by Congressman Doughton (H. R. 8539, print dated June 18, 1935), the words "payable monthly" appeared after the phrase "compensation at the rate of $10,000 per annum." These words are

not found in the bill introduced by Congressman Cullen on July 16, 1935 (H. R. 8870, print dated July 16, 1935), nor do they appear in any of the other prints of this bill.

(c) The Administrator shall, without regard to the civil-service laws and the Classification Act of 1923, as amended, appoint and fix the compensation and duties of such officers and employees as he deems necessary to carry out his powers and duties, but the compensation so fixed shall be subject to the approval of the Secretary of the Treasury. The Administrator is authorized to adopt an official seal, which shall be judicially noticed.

NOTE.—This subsection appeared in the bill as originally introduced in the following form:

> (c) The Administrator shall, with the approval of the Secretary of the Treasury, but without regard to the civil service laws and the Classification Act of 1923, as amended, appoint and fix the compensation and duties of such officers and employees as he deems necessary to carry out his powers and duties (H. R. 8539, print dated June 18, 1935).

The subsection appeared in its present form in the bill as introduced by Congressman Cullen on July 16, 1935 (H. R. 8870, print dated July 16, 1935).

At the hearing before the House Ways and Means Committee on June 20, 1935, Congressman O'Malley, of Wisconsin, appearing as a witness, stated that he would like to see the Administration's employees amenable to the Civil Service Act and have Congress and not the Administrator fix their salaries (record of Ways and Means Committee hearing on H. R. 8539, p. 96).

When the report of the committee was considered on the floor of the House, Congressman Mapes, of Michigan, proposed an amendment placing the employees under the Classification Act and the civil service. He argued that favoritism would thus be avoided and the Administrator would be protected from criticism in the choice of his employees. In the liquor field employees should not be chosen through patronage or for other political reasons. Congressman Vinson of the committee pointed out that a civil-service requirement would bar all of the persons employed by the F. A. C. A. In this connection Mr. Doughton said:

> Mr. Chairman, I trust the amendment of the gentleman from Michigan will not prevail. No doubt his motive is good, but the effect of his amendment would be bad; there is not any question about that.
>
> The Alcohol Control Administration, under Mr. Joseph Choate, a distinguished gentleman from New York, a Republican, has built up an organization composed of both Democrats and Republicans, I have been reliably informed.
>
> That personnel has been very carefully selected, and those employees who have not been found capable and efficient have

been discharged and removed and only those retained who have proven their qualifications, efficiency, and capability.

In this particular work, to set up a system whereby all of this trained personnel and all of these trained people, which has cost the Government much money to train, would be lost to the Government, I am quite sure would be something my friend would hardly be willing to take the responsibility for. The Bureau would have to be manned with new people picked up from various departments. Of course, they would have education and knowledge, but they would have no experience in this particular work (Cong. Rec., vol. 79, no. 151, p. 12192, July 23, 1935).

Congressman McCormack, of Massachusetts, also a member of the committee, added:

Mr. Chairman, in addition to the argument of the gentleman from North Carolina as to the efficiency of the present personnel, which I think the gentleman from Michigan (Mr. Mapes) recognizes, and this being a permanent set-up which he also recognizes, the President has the power by Executive order to bracket the personnel that should be included and taken over by the Federal alcohol set-up. They may take the persons with the experience which the Government ought to have in this new set-up in the Treasury Department. The power is there already under general law to bracket them under the civil service by a general order (id. p. 12193).

After some further discussion the amendment of Mr. Mapes was voted down 103 to 42.

In discussing the advisability of creating an independent agency before the Senate Finance Committee, Mr. Choate stated that he believed that the staff of the F. A. C. A., "the only people in the country who do know the business", should be carried over into the new agency, and that the creation of a new staff and the confusion in the industry during its training should thus be avoided. The creation of a new staff in the Treasury Department would not result in economy but in the reverse. He also said:

No one would more strongly advocate than I would the eventual bringing of this organization into the civil-service fold, but while it is performing specialized services for which it has a trained staff, which cannot be replaced outside, I would say it would be unwise to apply those regulations. (Record of Finance Committee hearings on H. R. 8870, p. 4.)

The Senate's amendment of this section appears above, but the conferees suggested that the Senate yield on this point (see quotation from statement of managers contained in footnote to sec. 2 (a) supra). Congressman Mapes noted the retention of the House provision when the conference report was considered by the House (Cong. Rec., vol. 76, no. 177, p. 14806, Aug. 24, 1935).

(d) The Administrator is authorized and directed to prescribe such rules and regulations as may be necessary

to carry out his powers and duties. All rules and regulations prescribed by the Administrator shall be subject to the approval of the Secretary of the Treasury.

NOTE.—This subsection appeared in the same form in the bill as introduced by Congressman Doughton on June 18, 1935, and was never amended by the House. Though the Senate struck out the last sentence in view of its contention that a separate agency be established, it receded as a result of the conference report, and the subsection was passed in its original form, (see quotation from Statement of the Managers in note to section 2 (a) supra).

(e) Appropriations to carry out powers and duties of the Administrator shall be available for expenditure, among other purposes, for personal services and rent in the District of Columbia and elsewhere, expenses for travel and subsistence, for law books, books of reference, magazines, periodicals, and newspapers, for contract stenographic reporting services, for subscriptions for library services, for purchase of samples for analysis or use as evidence, and for holding conferences of State and Federal liquor control officials.

NOTE.—Except for the correction of a clerical error (changing the word "conference" to "conferences") and the clerical changes involved by the Senate's desire for control through a commission, this subsection remained as it appeared in the bill introduced by Mr. Doughton on June 18, 1935 (H. R. 8539, print dated June 18, 1935). An appropriation of $300,000 for the purpose of carrying out the provisions of the Act for the fiscal year 1936 was attached by amendment proposed by Senator Adams of Colorado, to the Third Deficiency Bill (74th Cong., 1st sess., H. R. 9215) (Cong. Rec., vol. 79, no. 177, p. 14922). This deficiency bill failed to pass the Senate prior to the adjournment of the Congress. The Ways and Means Committee report refers to this subsection as follows:

> The usual objects of expenditure of appropriations are authorized by subsection (e) of section 2, but provision is specifically made by which the Administrator may acquire magazines, periodicals, and newspapers so that he may effectively carry out his powers relating to advertising contained in section 5, and specific provision is made under which expenditure may be made for the purchase of samples for analysis and use as evidence (H. Rept. 1542, Federal Alcohol Control Bill, p. 5).

(f) The Administrator may, with the consent of the department or agency affected, utilize the services of any department or other agency of the Government to the ex-

tent necessary to carry out his powers and duties and authorize officers and employees thereof to act as his agents.

NOTE.—This subsection remained as it appeared in the bill introduced by Mr. Doughton on June 18, 1935 (H. R. 8539, print dated June 18, 1935), except for clerical amendments, afterward deleted, involved in the Senate's proposal to establish a Commission in lieu of an Administrator. The subsection is merely mentioned in the report of the Ways and Means Committee (H. Rept. 1542, Federal Alcohol Control Bill, p. 5).

(g) The provisions, including penalties, of sections 9 and 10 of the Federal Trade Commission Act, as now or hereafter amended, shall be applicable to the jurisdiction, powers, and duties of the Administrator, and to any person (whether or not a corporation) subject to the provisions of laws administered by the Administrator.

NOTE.—This subsection appeared in the same form in the bill introduced by Mr. Doughton on June 18, 1935 (H. R. 8539, print dated June 18, 1935), and, except for clerical changes due to the Senate's amendment relating to the establishment of a Commission, is found in the other prints of the bill. The Ways and Means Committee in its report referred to it briefly:

> Subsection (g) applies the procedural provisions of law relating to Federal Trade Commission investigations to the exercise of the Administrator's powers (H. Rept. 1542, Federal Alcohol Control Bill, p. 5).

(h) The Administrator is authorized to require, in such manner and form as he shall prescribe, such reports as are necessary to carry out his powers and duties.

NOTE.—The language is the same as in the bill introduced by Mr. Doughton on June 18, 1935 (H. R. 8539, print dated June 18, 1935), and except for clerical changes in the Senate, remained the same until the bill was passed. The subsection is merely mentioned in the report of the Ways and Means Committee (H. Rept. 1542, Federal Alcohol Control Bill, p. 5).

(i) The Administrator shall make a report to Congress, at the beginning of each regular session, of the administration of the functions with which he is charged, and shall include in such report the names and compensation of all persons employed by the Administration.

NOTE.—The Senate Finance Committee proposed that a new subsection be inserted in this section authorizing the Commission to

make investigations and studies and to report thereon to the President and to the Congress (H. R. 8870, print dated Aug. 9, 1935). This subsection was passed by the Senate (Cong. Rec., vol. 79, no. 167, p. 13396) and read:

> (i) The commission is authorized to make investigations and studies and to report thereon from time to time to the President and to the Congress, together with recommendations, with respect to matters necessary for the proper performance of the powers and duties conferred upon the commission, and with respect to the production, distribution, and consumption of alcoholic beverages, including monopolistic practices, unfair methods of competition, and concentration of ownership in the alcoholic beverages industries, and control of retail outlets and prices; advertising, labeling, and merchandising methods with respect to alcoholic beverages, including standards of identity, quality, and size and fill of container therefor; and enforcement of the twenty-first amendment, State and Federal cooperation in the administration of alcoholic beverage control laws, and methods of promoting temperance. The commission, whenever in its judgment such action will be in the public interest, may publish the results of such investigations and studies (H. R. 8870, print dated Aug. 13, 1935).

At the hearing before the Ways and Means Committee on June 19, Mr. Choate suggested that a similar section be incorporated into the bill on the ground that it was necessary that some one in the Government be definitely charged with observing the problems of the industry and with furnishing information and making recommendations with respect thereto. Congressman McCormack criticized the section proposed by Mr. Choate as it referred to methods of promoting temperance and this might be considered paternalistic (Record of Ways and Means Committee hearing on H. R. 8539, pp. 24 and 25). With respect to this proposed amendment the Finance Committee stated in its report:

> The amendment recommended by the committee also authorizes the commission to make certain investigations and studies and report thereon to the President and to the Congress. It is believed that such investigations and studies and voluntary activities of the commission in connection therewith will prove as valuable in obtaining law observance by the alcohol beverage industries as the regulatory provisions of the bill (S. Rept. No. 1215, Federal Alcohol Control Act, p. 4).

The Senate, however, receded from this amendment as a result of the conference (H. Rept. 1898, Revenue From Distilled Spirits, p. 9).

This subsection did not appear in the print of the bill while it was before the House. It was added as subsection (j) as a committee amendment by the Senate (H. R. 8870, print dated Aug. 9, 1935; S. Rept. No. 1215, Federal Alcohol Control Act, p. 4; Cong. Rec. vol. 79, no. 167, p. 13396). As a result of the managers' statement the House acceded to the incorporation of this subsection as passed by the Senate with only minor clerical changes (H. Rept. 1898, Revenue From Distilled Spirits, p. 9).

UNLAWFUL BUSINESSES WITHOUT PERMIT

SEC. 3. In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages:

NOTE.—In connection with the control of the liquor industries by means of a permit system the Ways and Means Committee stated in its report on the bill:

> A permit or license system has been a customary method of administering and enforcing liquor laws. At the present time by act of Congress distillers of alcohol for industrial purposes and brewers of beer of an alcoholic content of 3.2 by weight or less operate under Federal permits. The permit system was used under the codes.
>
> Enforcement of liquor laws is an exceptionally difficult enforcement problem. Many factors not common to other industries exist in the liquor industry and present enforcement difficulties not commonly met with in the enforcement of other laws. The racketeering element present in the industry during prohibition is not wholly eliminated. Internal revenue taxes and customs duties afford an economic inducement to operate outside of both liquor tax and liquor control laws. The industry has been newly reestablished and is unstable in its personnel and practices. This, together with the tradition of past practices, particularly corruption and interference in politics and efforts to stimulate consumption through the "tied house" and control of retail channels, afford a poor groundwork for reliance on law observance through voluntary action or through the customary methods of enforcement. The history of the enforcement of liquor laws in this country has been characterized by widespread violations and evasions. The ease with which the products of the industry are adulterated, sophisticated, and misbranded; their relatively high value; the perishable character of many wines and malt beverages; the large distribution costs—all are extraordinary incentives to ignore requirements of law. The mobility of products of the industry makes all channels of interstate and foreign commerce readily available for illegal transactions. Relatively drastic enforcement methods, such as the permit system, therefore become necessary (H. Rept. 1542, Federal Alcohol Control Bill, pp. 5 and 6).

And with respect to the scope of the permit system:

> *Scope of permit system.*—The bill (sec. 3) requires permits for all distillers; wine producers; rectifiers or blenders of distilled spirits or wine; bottlers or warehousemen and bottlers of distilled spirits; importers of distilled spirits, wine, or malt beverages; and wholesalers of distilled spirits, wine, or malt beverages. The permit does not authorize the industry member

to engage in operations which are prohibited by State laws. No permits are provided for brewers or retailers. No permit is required for any State liquor control monopoly, board, or similar agency, or the members thereof.

A distiller, blender, or rectifier, or other producer of distilled spirits or wine, or an importer of distilled spirits, wine, or malt beverages, or a wholesaler of such products, would, under his permit as such, be in addition authorized, either directly or indirectly or through an affiliate, to sell or otherwise dispose of in interstate or foreign commerce, at wholesale or retail, goods produced by him, imported by him, or purchased by him, respectively. No permit authority is required for sale or other disposition in intrastate commerce or for warehousing, except in connection with bottling of distilled spirits.

The permit would also include authority to the producer, importer, or wholesaler to bottle, with or without reduction in proof, either directly or indirectly, or through an affiliate, bulk goods produced, imported, or purchased, respectively, by the permittee; subject to the limitations of section 4 (e) (2) which restricts the privilege of bottling in case of distilled spirits. Puerto Rico is not included in the restriction inasmuch as the internal-revenue laws do not apply within Puerto Rico. In accordance with these restrictions, a distiller could, under his permit, bottle in a distillery bonded warehouse all distilled spirits of his own production, and if his warehouse is designated as a concentration warehouse or if he operates an alcohol bonded warehouse, he may also bottle distilled spirits produced by others either on his own account or for hire. Such bottling operations may be undertaken on the tax-paid premises in connection with any such warehouse, and the permittee may sell or otherwise dispose of at wholesale or retail in interstate or foreign commerce the distilled spirits so bottled. A blender or rectifier of distilled spirits could under his permit bottle on his rectifier's premises distilled spirits blended or rectified by him or acquired by him from any other person, whether for his own account or for hire, and sell or otherwise dispose of at wholesale or retail in interstate or foreign commerce the distilled spirits so bottled.

A warehouseman, who is not a distiller or rectifier, could under his permit bottle distilled spirits acquired by him from any other person, whether for his own account or for hire, if the warehouseman is operating a general or special or alcohol bonded warehouse qualified under the internal revenue laws or a class 8 bonded warehouse qualified under the customs laws, and if the bottling operations occur on the bonded premises of such warehouse or the tax-paid premises in connection therewith; and could under his permit sell or otherwise dispose of at wholesale or retail in interstate or foreign commerce the distilled spirits so bottled. An importer or wholesaler would have no privilege of bottling distilled spirits for sale or resale unless he qualified as a rectifier under the internal-revenue laws.

The permit provisions apply to all members of the specified industries, irrespective of whether the permittee's operations

> are intrastate or interstate in character. Apart from the more effective enforcement of revenue and postal laws, which apply as well to intrastate as to interstate operations, laws relating to the enforcement of the twenty-first amendment and to interstate commerce require that the permit system extend to all intrastate operations in order that the permit system may be an effective means of preventing evasion of these laws. The intricacies of corporate set-ups, the establishment of branch houses and sales corporations, the use of rectifiers, blenders, and wholesalers as interstate distribution conduits, and the disposal of stocks through sale of warehouse receipts, make it necessary that all industry members of the specified industries operate under permits, irrespective of the character of their operations at any time, if the permit system is to prove adequate in more effectively enforcing the revenue and postal laws and laws relating to interstate commerce and the twenty-first amendment (id. pp. 6 and 7).

One of the most debated questions in the drafting of the Act concerned the position of the brewers under it. In the draft of the bill discussed at the Ways and Means Committee hearings on June 19 and 20, 1935 (H. R. 8539, print dated June 18, 1935), the brewing industry was subjected to the permit system. Clause numbered (1) of subsection 3 (b) provided that it shall be unlawful, except pursuant to a basic permit issued under the act by the Administrator—

> to engage in the business of distilling distilled spirits, producing wine, *producing malt beverages*, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits, or (id. p. 6, italics ours).

This provision excited considerable opposition at the hearings. Mr. Nicholson, a representative of the Ruppert brewery, who, it was stated, spoke for a committee representing 496 brewers, appeared in order to contest the subjection of brewers to a permit system. He objected as a matter of principle and because he believed the provision unnecessary. He believed that all the benefits of the N. R. A. could be best preserved through voluntary agreements among brewers, since their business was largely intrastate in character, through State cooperation (Record of Ways and Means Committee hearing on H. R. 8539, pp. 61–63). Mr. Paul Esselborn, a Cincinnati brewer, read to the committee a statement submitted by Mr. John C. Bruckmann, former chairman of the Brewers' Code Authority under the F. A. C. A. Brewers' Code of Fair Competition. This statement also opposed a permit system for brewers and pointed out the fact that brewers alone of the alcoholic beverage industries had operated under a voluntary and not an imposed code, and that their code contained no permit provisions. He further stated that during the drafting of this code Government officials had attempted to write in permit requirements, and that after the refusal of the brewers to accept the provision and after considerable study the Government came to the decision that the brewers were right (id. pp. 64 and 65). Congressman O'Malley, of Wisconsin, appearing as a witness, also objected to the inclusion of malt beverages in

the bill, since brewers had operated very satisfactorily in the past without any permit system (id. pp. 95 and 96). A brief filed with the committee by Charles R. Lipsett, publisher of the trade journal, "Brewers News", in addition to the above arguments, stated that, since beer is not considered intoxicating, it should be strictly differentiated from hard liquor and should not be subjected to the same rigorous supervision and that State control alone should be sufficient (id. p. 131). This argument was also proffered by Mr. Nicholson (supra).

In testifying at the hearing, Mr. Choate stated in this connection that it was logical, if one industry was under permits, that the rest of them should be also, but that the F.A.C.A. got along "fairly well" with the brewers not under permits (id., p. 28).

The former supervisor of the Beer Division of the Wholesale Code Authority, Mr. A. D. O'Connor, strongly urged that all of the alcoholic beverage industries be placed under permits and that, if the brewers were excepted from the provision, the permit system should be entirely eliminated. He stated that the beer wholesalers were the largest of the alcoholic beverage industries in number, about 9,000 distributors. He also submitted a letter from his division of the Code Authority to the F.A.C.A. requesting that the brewers' code be amended to provide for permits (id., p. 116).

In the bill introduced by Mr. Cullen on July 16, 1935 (H. R. 8870, print dated July 16, 1935), the phrase "producing malt beverages", which appeared in clause (1) of subsection 3 (b) of H. R. 8539, was deleted and the brewers were thereby removed from the permit system.

Considerable additional testimony relating to the position of brewers under the act was offered at the hearings on July 26, 27, and 29, 1935, before the Senate Finance Committee. Mr. M. J. Donnelly, of Chicago, representing the brewers shipping in interstate commerce, made a very strong plea for the complete omission of brewers from the Act. His argument raised the following points: (1) The Act does not protect the revenue derived from the manufacture of malt beverages; (2) a separate agency need not be created to enforce the postal laws and the twenty-first amendment since the Department of Justice already has supervision of these matters; (3) the Act is an attempt to legislate code provisions that have already been declared unconstitutional by the Supreme Court; (4) the brewing industry, already subject to numerous regulatory bodies, will be unnecessarily burdened by having to comply with the regulations and rulings of another one. He differentiated beer from distilled spirits by stating that, while 90 percent of distilled spirits is shipped in interstate commerce, only 20 percent of beer is so shipped. The shipping brewer is in continual competition with local brewers and would be discriminated against if forced to comply with Federal restrictions to which local brewers doing an intrastate business were not subject. The present act would not reach intrastate brewers (citing *Ward Baking Co.* v. *Fed. Trade Comm.*, 264 Fed. 330; *Schechter Poultry Corp.* v. *U. S.*, 55 S. Ct. Rep. 837; and *Fed. Trade Comm.* v. *Sinclair Refining Co.*, 261 U. S. 463). He adduced the falsity of the theory that the evils which caused prohibition were due to the control of

retail outlets by brewers (hearings of Senate Finance Committee on H. R. 8870, pp. 113–122).

Mr. Walter D. Corrigan, representing the Wisconsin State Brewers Association, stated his association, as well as 450 brewers in convention at Chicago, had requested that they work out their problems by voluntary agreements and cooperation. He argued that beer was nonintoxicating and that it was illogical to group it in legislation with distilled spirits. (See discussion with Senator Barkley, Hearing Record, pp. 123 and 124.) He pointed out that there is at present little or no bootlegging in beer and therefore no great need of stringent control. He argued that in order to effectuate the "very fine purposes" recited in the bill the Administrator must apply its provisions to local breweries and if he did so, the act would be clearly unconstitutional. Senator Connally pointed out that in that event the application, and not the act, would be bad (id., p. 126). The discrimination against the interstate brewer would cause him to stop shipping interstate and, by selling his product locally, force the smaller brewers to the wall (id. 128).

Mr. O'Connor testified again that the exemption of the brewers from the permit system would leave the Government powerless to enforce most of the provisions of the bill. The brewers are more vitally concerned with the fair trade practice provisions than the other industries but without a permit system applicable to brewers it will be difficult to enforce these provisions (id. 138–141).

The Finance Committee proposed that malt beverages be eliminated from the act and suggested the necessary clerical and substantial amendments to accomplish this result (H. R. 8870, print dated Aug. 9, 1935). The reasons given for these amendments are stated in the committee's report to be:

> Under the House bill the various branches of the malt-beverage industry were subjected to varying degrees of regulation. Importers and wholesalers, for instance, of malt beverages were required to obtain basic permits before doing business; and the provisions against unfair competition and unlawful practices applied to brewers and importers and wholesalers of malt beverages. It was emphasized before your committee that a comparatively small percentage of brewers distributed their products in interstate or foreign commerce, and the power to regulate such commerce afforded the constitutional basis for the provisions relating to unfair competition and unlawful practices. It may be observed in this connection that the brewing industry operated under a voluntary code under the code system, whereas the President imposed codes upon the other alcoholic beverage industries, namely, the distillers, rectifiers, importers, wholesalers, and wine producers. Aside from these facts, however, your committee took the position that the application of the bill should be limited to distilled spirits and wines (S. Rept. 1215, Federal Alcohol Control Bill, p. 6).

The Senate agreed to this amendment without discussion and the bill as passed by the Senate on August 13 (Cong. Rec. Vol. 79, No. 167, p. 13396; H. R. 8870 print dated Aug. 13) does not refer to malt beverages.

This major change in the bill made necessary many clerical amendments in other sections. Since these changes raise no questions other than those discussed above they will be overlooked or merely mentioned in the consideration of later sections of the Act.

The conferees suggested that the Senate recede from its amendments eliminating malt beverages from the bill and that a compromise provision be added dealing with the fair-trade provisions. This compromise will be considered later. The statement of the managers summarizes the matter below:

> Amendments nos. 15, 16, 18, 19, 24, 25, 37, 39, 78, 79, 80, 81, 82, 83, 89, 90, 91, 92, 94, 97, 101, 102, 106, 108, 109, 112, 114, 119, 123, 126, 155, and 157: The House bill covered beer and other malt beverages, and its provisions applied to brewers and importers and wholesale distributors of such malt beverages, except that brewers were exempt from the provisions of the House bill requiring basic permits. The effect of these Senate amendments is to exempt brewers, importers, and wholesale distributors of malt beverages from all provision of the bill.
>
> The conference agreement retains the provision of the House bill under which importers and wholesalers of malt beverages are required to have permits. The conference agreement applies the trade practices provisions of the bill to malt beverages with a modification under which such provisions are to apply to transactions between a brewer or other distributor outside a State and a retailer or trade buyer in a State only to the extent that the State imposes similar requirements on the same classes of persons and with respect to the same transactions within the State, and under which the requirements of the bill with respect to labeling and advertising are to apply to persons outside the State in respect to their products shipped into or advertised in a State only to the extent that the State imposes similar requirements in similar cases within the State. The conference action to accomplish this result consists of the House receding with an amendment on amendment no. 79 and the Senate receding on all the other amendments. (H. Rept. No. 1898, Revenue From Distilled Spirits, p. 9, the numbers refer to the print of H. R. 8870 dated August 13, 1935, with Senate amendments numbered.)

In the discussion of the conference report before the House, Congressman Fuller of Arkansas, a member of the Ways and Means Committee, stated:

> Mr. Speaker, I know it is useless to seek to kill a conference report in the closing hours of a session, but I think in this case the House conferees have made an absolute surrender. It is an instance in which the voices of the majority of the members on the committee were not taken into consideration as well as the sentiment of the House. This bill, as it passed the House, was not the same instrument now pending before us. It is a surrender to the liquor and to the glass-bottle lobby of the United States as well as to the brewers.
>
> We seek to have an alcohol control board created to regulate the liquors of this country, including whisky and beer, but the

brewers with their influence and power are exempted from this bill. The brewers, as everyone knows, are the ones who have caused the greatest trouble in the past. It is common knowledge that in the old days on almost every street corner in the big cities the brewers equipped saloons, and dominated them. Under this law they cannot be regulated at all. According to the Senate amendment, which the House agreed to in conference, they cannot be regulated (Cong. Rec. Aug. 24, Vol. 79, No. 177, p. 14806).

In this same connection the following discussion occurred:

Mr. CELLER. Do I understand from this conference report that the brewers are not going to be regulated, that they may continue their system of tied houses?

Mr. FULLER. Absolutely.

Mr. CELLER. That is wrong.

Mr. FULLER. They concurred in the Senate amendment. They say that "tied houses" may be regulated in the various States. If the States are to regulate breweries, why not the States also regulate the distillers in their unfair practices and save the Federal Government the expense? Why separate them when one needs regulation as much as the other? In other words, if New York wants to buy Milwaukee beer, the Federal control can regulate that interstate transaction. Eighty percent of the beer is sold in the States where brewed.

Mr. CELLER. There are only a few interstate sales.

Mr. FULLER. Yes; just a few. This bill ought to be branded and known as the "brewery bill from Milwaukee." That is how it ought to be known. If there is any use for the maintenance of alcoholic control in the United States, the Board ought to have something to do, but under the terms and provisions of this bill the employers will have absolutely nothing to do. It simply means the continuation of jobs for two or three hundred people with nothing to do under the terms and provisions of this bill.

Mr. MCFARLANE. Will the gentleman yield?

Mr. FULLER. I yield to the gentleman from Texas.

Mr. MCFARLANE. The platform provides—

> We urge the enactment of such measures by the several States as will actually promote temperance and effectively prevent the return of the saloon.

Does this bill do that?

Mr. FULLER. No.

Mr. MCFARLANE. Will not this bill tend to put an open saloon on every street corner?

Mr. FULLER. It will have a tendency toward the days before prohibition.

Mr. HOEPPEL. Will the gentleman yield?

Mr. FULLER. I yield to the gentleman from California.

Mr. HOEPPEL. May I state that I am going to support the gentleman's argument, because only last Monday there were 225 drunks arraigned in the courts of the District of Columbia. I concur with the gentleman's views on temperance, but fear

the liquor business, controlled as it appears to be by the Whisky Trust and the brewers, will ultimately lead to the preprohibition excesses. The Government should exercise positive and complete control of the liquor business in the interests of morals and the elimination of political dominance by the whisky interests.

Mr. FULLER. Some of the Members of this House may not be well enough informed to know the powerful influences of the liquor organization in this country. This powerful organization is absolutely controlling and dictating the terms and provisions of this bill, as well as all legislation and all rules and regulations which come out of the Alcohol Control Division of the Treasury Department affecting liquor. The Board and this division is controlled absolutely, lock, stock, and barrel, by the biggest monopoly that has ever been known in this country. If we do not stop this we will go back to the time before prohibition.

Mr. CELLER. I will be happy to cooperate, as will many Members of the House, in any kind of legislation to come out of the Ways and Means Committee controlling the breweries. Will the gentleman cooperate?

Mr. FULLER. Certainly I will. The House Ways and Means Committee put the breweries under control just like the distilleries, one of them violates the law no more than the other. The "tied houses" will be tied to the breweries the same as before prohibition, with no Federal regulation. Such a compromise is a shame and brought about by the powerful influence of the brewers and distillers.

Mr. Speaker, I have no distilleries in my State, nor have I any breweries. This lobby is influencing newspapers by advertising and propaganda. Why, they are even making the good women of the W. C. T. U. believe they are pulling strong for prohibition in this country. If we follow them we will go back to the old bootleg policies and they will be running the temperance cause of this country (Cong. Rec. Aug. 24, 1935, Vol. 79, No. 177, pp. 14806 and 14807).

The act therefore represents a compromise between the position taken by the Ways and Means Committee and the House that the brewing industry should be subjected to the same restrictions as the other alcoholic beverage industries, except for permit requirements, and the stand taken by the Finance Committee and the Senate that malt beverages and the brewing industry be excluded from the act.

(a) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in interstate

or foreign commerce, directly or indirectly, or through an affiliate, distilled spirits, wine, or malt beverages so imported.

This subsection shall take effect sixty days after the date upon which the Administrator first appointed under this Act takes office.

NOTE.—In view of the Senate's position that the act should be administered by a commission and that malt beverages should not be subject to it, clerical amendments were made in the bill by the Senate (H. R. 8870, prints dated Aug. 9, 1935, and Aug. 13, 1935). Except for the last sentence the subsection was restored to its original form by the conferees (H. R. 8539, print dated June 18, 1935).

In the bill as introduced by Mr. Doughton on June 18, 1935 (H. R. 8539), the last sentence of this subsection read: "This subsection shall take effect sixty days after the enactment of this act." The Senate Finance Committee proposed that the sentence be amended to read: "This subsection shall take effect sixty days after a majority of the commissioners first appointed take office" (H. R. 8870, print dated Aug. 9, 1935). This passed the Senate without discussion (H. R. 8870, print dated Aug. 13, 1935, Cong. Rec., Aug. 13, 1935, vol. 79, no. 167, p. 13396). The conferees suggested the language in the act (H. Rept. No. 1898, Revenue From Distilled Spirits, pp. 2 and 9).

Amendments nos. 20 and 22: Under the House bill the requirement that importers and persons engaged in the business of distilling spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling or warehousing and bottling distilled spirits, must have a basic permit to engage in operations, became effective 60 days after the enactment of the act. The Senate amendment provides that these requirements shall be effective 60 days after such date as the majority of the commission first appointed takes office. The House recedes on both amendments with amendments changing "Commission" to "Administrator" (H. Rept. No. 1898, p. 9).

(b) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits or wine so distilled, pro-

duced, rectified, blended, or bottled, or warehoused and bottled.

This subsection shall take effect sixty days after the date upon which the Administrator first appointed under this Act takes office.

NOTE.—See note to subsection 3 (a) above and note to section 3 above as to the inclusion of producers of malt beverages under this section in the bill as introduced by Mr. Doughton (H. R. 8539, print dated June 18, 1935).

(c) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of purchasing for resale, at wholesale, distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

This subsection shall take effect March 1, 1936.

NOTE.—See note to subsection 3 (a) above. In the bill introduced by Mr. Doughton (H. R. 8539) and the bill introduced by Mr. Cullen (H. R. 8870) the date appearing in the last sentence of this subsection was "January 1, 1936." March 1, 1936, was suggested by the Finance Committee as the effective date of this subsection (H. R. 8870, print dated Aug. 9, 1935) and received the approval of the Senate (H. R. 8870, print dated Aug. 13, 1935). The conferees recommended that the House recede:

> The House bill provided that the requirement that wholesale distributors must have a basic permit to engage in operations should take effect January 1, 1936. The Senate amendment provides that this requirement shall take effect March 1, 1936. The House recedes (Statement of Managers, H. Rept. No. 1898, Revenue From Distilled Spirits, Aug. 23, 1935, pp. 9 and 10).

This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under this Act.

NOTE.—This sentence did not appear in the bill introduced by Mr. Doughton on June 18, 1935 (H. R. 8539). At the Ways and Means Committee hearing on June 19, Mr. George E. Eppley, a

member of the Ohio State Liquor Board, requested that Ohio and other States engaged in the liquor business under a State monopoly system be specifically exempted from this section of the act. He argued that States should not be required to apply to the Federal Government for permission to engage in the liquor industries. He assented to regulation under the other sections of the act. After some discussion with members of the committee as to whether a State liquor monopoly is subject to Federal regulation, Congressman Hill stated that a sovereign State ought not to have come to the Federal Government to get a permit to do that which is lawful within the State. Congressman Dingell, through questioning, ascertained that the Ohio board was permitted to sell only within the State of Ohio and not outside the State (record of Ways and Means Committee hearings on H. R. 8539, pp. 54–58).

Mr. Choate was consulted as to the advisability of exempting State monopolies from the permit section:

> Mr. VINSON. Mr. Chairman, would it be asking too much just at this point for Mr. Choate to make a statement of his views in regard to the State control board?
>
> Mr. CHOATE. You referred to the statement in regard to what, Mr. Vinson?
>
> Mr. VINSON. The testimony of the witness as to exempting a State liquor board from the operation of this statute.
>
> Mr. CHOATE. I see really no serious objection to exempting them, if they want to be exempted. I think they ought to be under the regulations, both of the statute and of the regulations imposed under the statute, but I think the permit, in the case of the State, would offer no substantial additional means of enforcement. If a State wants to violate the rules, I think they will violate them. I do not expect the State to want to violate them.
>
> Mr. VINSON. So far as you are concerned, then, and so far as it applies to the permit, the statute might exempt State agencies such as the State Liquor Board of Ohio.
>
> Mr. CHOATE. I should think so, without great difficulty, although I agree with you that when the State engages in the business it is a private business and is subject to regulation, if anybody wants to regulate it (Record of Ways and Means Committee hearings on H. R. 8539, pp. 58 and 59).

Later in the hearings, in discussing the practice of some State monopolies of forcing distillers to sell on consignment or accept exchanges of "dead stock" for merchandise, Mr. Choate made it clear that he did not advocate that the States be entirely exempted from the act and that he did not believe an exemption from the permit section above would have this result:

> Mr. VINSON. With those practices admitted, do you not think that this agency of the State, which certainly is not an essential governmental function, should be treated as any other person or agency?
>
> Mr. CHOATE. There is no question in my mind that the same rules ought to apply to the States as to the individuals, except that I have some doubt as to whether in case of the State the

permit system adds any such power of enforcement as it does in the case of the individual.

Mr. VINSON. It cannot hurt anything, can it?

Mr. CHOATE. I doubt if it can hurt anything much.

Mr. VINSON. As I understand it, we want control; if I read the papers correctly, we want control of the liquor business to some degree, within bounds.

Mr. CHOATE. Within the bounds suggested in this bill.

Mr. VINSON. You would not have any objection to causing the State monopoly or State stores to put in the permit system?

Mr. CHOATE. No; but at the same time I think it is a debatable question as to whether it is worth while to injure the State feelings, if they have such feelings, when as a matter of fact, if we revoke the permit, we could not do anything to a State who chose to defy us.

Mr. MCCORMACK. Could you not control that situation by a permit to the distiller, so that they can take that back?

Mr. CHOATE. Yes; but the difficulty is that it enables the State to coerce the distiller. All these transactions were in violation of the distillers' code, but the distillers, with an enormous customer like the State of Pennsylvania facing them, could not as a practical matter refuse to violate the code, when the State of Pennsylvania told them to.

Mr. MCCORMACK. It was not fair to put them in the position of fighting a sovereign State.

Mr. CHOATE. We thought so (id. pp. 85 and 86).

The sentence appeared in its present form in the bill introduced by Mr. Cullen on July 16, 1935 (H. R. 8870) and it was not amended by the House or Senate. The Ways and Means Committee report states:

> No permit is required for any State liquor monopoly, board, or similar agency, or the members thereof (H. Rept. No. 1542, Federal Alcohol Control Bill, July 17, 1935, p. 6).

At the Finance Committee hearings Judge Marion De Vries made a well-documented plea for subjecting State monopolies to permit requirements based on the status under Federal laws of State agencies engaged in functions that are not essentially governmental (record of Senate Finance Committee hearings on H. R. 8870, pp. 131–136).

Congressman Tarver, of Georgia, offered an amendment when the bill was discussed on the floor of the House after being reported out by the committee, to insert a new subsection in section 3, providing that it be unlawful to transport or import into any State, Territory, or possession of the United States for delivery or use therein, intoxicating liquors in violation of the laws thereof. Mr. Cullen pointed out that a bill to enforce the twenty-first amendment was at that time before the Judiciary Committee of the House and that the provision suggested by Mr. Tarver had no place in the bill. After some discussion Mr. Tarver's amendment was voted down 69 to 33 (Cong. Rec., July 23, 1935, vol. 79, no. 151, pp. 12183, 12194, and 12195).

Congressman Gilchrist, of Iowa, offered an amendment providing that it would be unlawful for any person to use imported molasses in the manufacture of alcohol or distilled spirits. After considerable discussion as to the use of blackstrap molasses in rectifying whiskey and in manufacturing gin, Mr. Doughton pointed out that the Act was not a farm relief bill nor a bill dealing with imports and that, therefore, although the farmers might be helped by the suggested amendment, it had no place in the Act. Some discussion followed as to whether or not the amendment was germane to the bill. On a vote the amendment was voted down 65 to 74 (Cong. Rec., vol. 79, no. 151, pp. 12195–12197).

PERMITS

SEC. 4. (a) The following persons shall, on application therefor, be entitled to a basic permit:

(1) Any person who, on May 25, 1935, held a basic permit as distiller, rectifier, wine producer, or importer issued by an agency of the Federal Government.

NOTE.—In the original bill introduced by Mr. Doughton on June 18, 1935, the word "brewer" appeared in clause (1) of subsection 4 (a); see note to section 3. Aside from this minor change the phrasing remains as it appeared in the original bill. The following excerpt from the Ways and Means Committee's report is explanatory of clause (1):

> All persons who held a basic permit issued under the code system and in full force and effect at the time of the termination of that system as a result of the decision in the *Schechter case*, are, under the bill, entitled as a matter of right to permits issued under the new law when enacted, except in the case of wholesalers (sec. 4 (a) (1)). Wholesalers held only temporary basic permits at the time of the termination of the code system. The temporary basic permits were issued without the usual investigation. The other permittees under the code system were issued permits after they demonstrated that they did not have records as law violators and that by reason of their previous experience, financial standing, and trade connections they were potential legal members of the industry (H. Rept. 1542, Federal Alcohol Control Bill, July 17, 1935, p. 8).

(2) Any other person unless the Administrator finds (A) that such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has, within five years prior to date of application, been convicted of a felony under Federal or

State law or has, within three years prior to date of application, been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof; or (B) that such person is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law; or (C) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted.

NOTE.—At the Ways and Means Committee hearing, Congressman Celler of New York, appearing as a witness, objected to the language of this section as being too vague, as permitting arbitrary rulings, and stated that the Volstead Act contained no such rigid restrictions. Congressman McCormack, of the committee, stated in reference to this objection:

> May I say this in regard to page 7, that I think you have placed a construction upon the language that the committee—I know some of the members of the committee, at least—never intended. They did not want to have too drastic requirements, and they limited it to three directions (Report of Ways and Means Committee hearing on H. R. 8539, p. 90).

While Mr. Choate was testifying at the Ways and Means Committee hearings on the bill, Congressman Dingell of Michigan asked him about this section:

> Mr. DINGELL. Right at this point, may I ask a question or two regarding what appears to me as an excess of power—right now, in this bill, page 7?
>
> In line 13, section (b), it grants the Administrator the power to withold a permit, if he presupposes that the applicant is a person who, by reason of his business experience, financial standing, or trade connections, is not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law. Is not that giving an Administrator an unusual amount of power, to presuppose and presume that a man may or may not make good in the business, and on that supposition to deny a permit?
>
> Mr. CHOATE. I would not say it was a question of presupposition. It is a question of the interpretation of the man's record. You cannot keep out of the business the men who ought to be kept out of the business, unless you use, in your permit section, thoroughly general language of that sort.
>
> Mr. DINGELL. But it is giving you a great deal of latitude to determine that matter.

Mr. CHOATE. It does give a good deal of latitude. There is no use questioning that. It is the very power we have been exercising for a year and a half (record of hearing on H. R. 8539, pp. 20 and 21).

Congressman O'Malley, of Wisconsin, appearing as a witness, criticized this section as not telling applicants just what conditions must be met to obtain a permit. He stated that the provision makes it an absolute one man dictatorship (id. pp. 96 and 97).

The committee's report contains the following statement in regard to this clause:

> Under the bill, wholesalers and new applicants are entitled to permits, unless the Administrator after notice and hearing makes certain specific findings (sec. 4 (a) (2)). Thus, in order to deny an application, the Administrator must find that the applicant, within 5 years prior to his application, has been convicted of a felony under Federal or State law, or that the applicant is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law, or that the operations proposed to be conducted under the permit are in violation of the laws of the State in which they are to take place.
>
> These requirements are designed to exclude from the industries persons who would be likely to violate the provisions of the bill and other Federal or State laws. Such requirements are, in the judgment of the committee, fair and reasonable, and bear a real and substantial relation to the adequate enforcement of provisions of Federal law heretofore enacted or enacted in the accompanying bill (H. Rept. no. 1542, Federal Alcohol Control Bill, p. 8).

The remainder of clause (A) after the phrase "been convicted of a felony under Federal or State law, or" is not found in the original bill or in the bill as reported to, and passed by the House (H. R. 8539, H. R. 8870 prints dated July 16, July 17, and July 25, 1935).

The Finance Committee suggested and the Senate passed the following amendment, "or of a violation of any Federal law relating to liquor, including the taxation thereof." (H. R. 8870 prints dated Aug. 9 and Aug. 13, 1935.) The present language was suggested by the conferees. (H. Rept. no. 1898, Revenue From Distilled Spirits, Aug. 23, 1935, pp. 2 and 10.)

(b) If upon examination of any application for a basic permit the Administrator has reason to believe that the applicant is not entitled to such permit, he shall notify the applicant thereof and, upon request by the applicant, afford him due notice and opportunity for hearing on the application. If the Administrator, after affording such notice and opportunity for hearing, finds that the appli-

cant is not entitled to a basic permit hereunder, he shall by order deny the application stating the findings which are the basis for his order.

NOTE.—This subsection appeared in the original bill introduced by Mr. Doughton (H. R. 8539) and except for clerical changes in the Senate retained its original form until enactment.

(c) The Administrator shall prescribe the manner and form of all applications for basic permits (including the facts to be set forth therein) and the form of all basic permits, and shall specify in any basic permit the authority conferred by the permit and the conditions thereof in accordance with the provisions of this Act. To the extent deemed necessary by the Administrator for the efficient administration of this Act, separate applications and permits shall be required by the Administrator with respect to distilled spirits, wine, and malt beverages, and the various classes thereof, and with respect to the various classes of persons entitled to permits hereunder. The issuance of a basic permit under this Act shall not operate to deprive the United States of its remedy for any violation of law.

NOTE.—This subsection appeared in the bill introduced by Mr. Doughton (H. R. 8539) and except for clerical changes by the Senate retained its original language until enactment.

(d) A basic permit shall be conditioned upon compliance with the requirements of section 5 (relating to unfair competition and unlawful practices) and of section 6 (relating to bulk sales and bottling), with the twenty-first amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto.

NOTE.—This subsection of the bill as originally introduced by Mr. Doughton read as follows:

> (d) A basic permit shall be conditioned upon compliance with the requirements of section 5 (relating to unlawful practices), with the Twenty-first Amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto (H. R. 8539, print dated June 18, 1935, p. 8)

In the bill as introduced by Mr. Cullen on July 16, 1935, the words "unfair competition and to" were inserted in the parenthetical phrase as it now appears.

The Senate Finance Committee recommended, and the Senate approved of, the insertion of the reference to section 6, which was a new section proposed at the same time. Since the House receded from its position with respect to section 6 it also permitted this reference to it (H. Rept. no. 1898, Revenue From Distilled Spirits, pp. 1 and 10).

The following statement with respect to this subsection is found in the Ways and Means Committee's report:

> *Conditions of permit.*—The only conditions which attach to a validly issued permit (other than revocation because of nonuse for more than 1 year or termination in the event of transfer) are: (1) Compliance with the provisions of the bill relating to unlawful practices involving interestate or foreign commerce and in some instances involving enforcement of the postal laws; (2) compliance with the twenty-first amendment and laws relating to the enforcement thereof (which would include the provisions of H. R. 8368, if enacted *), and (3) compliance with all other Federal laws now in force or hereafter enacted relating to distilled spirits, wine and malt beverages, including taxing laws, postal laws, and such interstate commerce laws as the Reed amendment (sec. 4 (d)). The permittee is thus left free under the bill to conduct his business as he sees fit, subject only to compliance with Federal laws of unquestionable validity. It follows, therefore, that the permit provisions constitute an exercise by Congress of its power to use such means as are "necessary and proper" in order more effectively to carry out its powers to collect taxes, regulate interstate and foreign commerce, enforce the twenty-first amendment, and administer the postal laws, as exercised in the provisions of the present bill relating to unlawful practices and enforcement of the twenty-first amendment, in laws hereafter enacted to enforce the twenty-first amendment, and in the provisions of existing law. (H. Rept. 1542, Federal Alcohol Control Bill, pp. 7 and 8.)
>
> * Ed. note.—H. R. 8368 failed to pass the 74th Congress at its first session.

(e) A basic permit shall by order of the Administrator, after due notice and opportunity for hearing to the permittee, (1) be revoked, or suspended for such period as the Administrator deems appropriate, if the Administrator finds that the permittee has willfully violated any of the conditions thereof, provided that for a first violation of the conditions thereof the permit shall be subject to suspension only; or (2) be revoked if the Administrator finds that the permittee has not engaged in the operations au-

thorized by the permit for a period of more than two years; or (3) be annulled if the Administrator finds that the permit was procured through fraud, or misrepresentation, or concealment of material fact. The order shall state the findings which are the basis for the order.

NOTE.—This provision appears in the bill introduced by Mr. Doughton (H. R. 8539) as section 4 (g). In the bill introduced by Mr. Cullen (H. R. 8870) it is numbered section 4 (f).

By an amendment offered by Congressman O'Neal of Kentucky, the period appearing in clause (2) of this subsection was changed from 1 to 2 years. The amendment was passed without discussion. Aside from this slight amendment and clerical changes made by the Senate, from which it later receded, the original language in Mr. Doughton's bill was retained (Cong. Rec., vol. 79, no. 152, p. 12265, H. R. 8539, sec. 4 (g), p. 9).

The Ways and Means Committee report contains the following statement relative to this subsection:

> A permit is subject to revocation or suspension for willful violation of its conditions or to revocation for nonuse, or to annulment if obtained through fraud, misrepresentation, or concealment of material fact (sec. 4 (f)). For a first offense, involving a violation of the conditions of a permit, the Administrator may not revoke, but only suspend, the permit. The requirements as to issuance and as to revocation, suspension, or annulment of a permit provide definite standards to be applied by the Administrator. The Administrator's determination must be embodied in findings made after due notice and opportunity for hearing. The bill fulfills all legal requirements as to both standards and findings (H. Rept. No. 1542, Federal Alcohol Control Bill, p. 8).

(f) Orders of the Administrator with respect to any denial of application, suspension, revocation, annulment, or other proceedings, shall be served (1) in person by any officer or employee of the Administration designated by the Administrator or any internal revenue or customs officer authorized by the Administrator for the purpose, or (2) by mailing the order by registered mail, addressed to the applicant or respondent at his last known address in the records of the Administrator.

NOTE.—Except for clerical changes, this subsection remained as it appeared in Mr. Doughton's bill (H. R. 8539). It was numbered in that bill as section 4 (h) and in Mr. Cullen's bill (H. R. 8870), until reported to the Senate by the Finance Committee, as section 4 (g).

In considering this subsection, the following excerpt from the report of the Ways and Means Committee should be noted:

> Provision is made in connection with the administrator's power to deny a permit or to revoke, suspend, or annul a permit that his action be by formal order stating therein the finding upon which the order is based (sec. 4 (b) and sec. 4 (f)). This requirement is inserted in order that the applicant or permittee may be informed of the substance of the reasons for the administrator's action (though this provision does not have the effect of invalidating the order if the reasons stated are inadequate but the record discloses adequate reasons). The specification that the action of the administrator, even in case of denial of an application for a permit, be by order permits the reviewing court to have something before it to review so that jurisdiction will not be denied on the ground that the action of the administrator is negative (H. Rept. No. 1542, Federal Alcohol Control Bill, pp. 8 and 9).

(g) A basic permit shall continue in effect until suspended, revoked, or annulled as provided herein, or voluntarily surrendered; except that (1) if leased, sold or otherwise voluntarily transferred, the permit shall be automatically terminated thereupon, and (2) if transferred by operation of law or if actual or legal control of the permittee is acquired, directly or indirectly, whether by stock-ownership or in any other manner, by any person, then such permit shall be automatically terminated at the expiration of thirty days thereafter: *Provided,* That if within such thirty-day period application for a new basic permit is made by the transferee or permittee, respectively, then the outstanding basic permit shall continue in effect until such application is finally acted on by the Administrator.

NOTE.—Except for a clerical change, this subsection remained as it appeared in Mr. Doughton's bill (H. R. 8539). It was there numbered as section 4 (i) and in Mr. Cullen's bill (H. R. 8870), until reported to the Senate by the Finance Committee, it was numbered as section 4 (h). With respect to this subsection, the report of the Ways and Means Committee states:

> The bill prohibits the lease, sale, or other voluntary transfer of any permit (sec. 4 (h)). This prohibition does not, however, prohibit the sale or other transfer of the assets of a permittee. A distiller, for instance, may sell his distillery but not his permit. The purchaser in such case is required to obtain a new permit. In order to provide continuity of operation of the business, in case of a sale, it lies within the power of the parties

to condition the transfer of title upon the prospective purchaser's obtaining a new permit. For the purpose of caring for situations that arise through transfers by operation of law or through acquisition, for instance, of control of an existing permittee by acquisition of its stock, provision is made for the continuance of the old permit, but only for a limited time, pending application for a new permit and action by the Administrator thereon. This, the committee believes, is necessary in order to prevent the permits from falling into the hands of bootleggers and other law violators who would not have been entitled to a permit in the first instance (H. Rept. No. 1542, Federal Alcohol Control Bill, pp. 9 and 10).

(h) An appeal may be taken by the permittee or applicant for a permit from any order of the Administrator denying an application for, or suspending, revoking, or annulling, a basic permit. Such appeal shall be taken by filing, in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, within sixty days after the entry of such order, a written petition praying that the order of the Administrator be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon the Administrator, or upon any officer designated by him for that purpose, and thereupon the Administrator shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Administrator shall be considered by the court unless such objection shall have been urged before the Administrator or unless there were reasonable grounds for failure so to do. The finding of the Administrator as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional

evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Administrator may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Administrator shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall, unless specifically ordered by the Court to the contrary, operate as a stay of the Administrator's order.

NOTE.—This subsection, except for one minor amendment, is in the same form in which it appeared in Mr. Doughton's bill (H. R. 8539). Except for clerical changes made by the Senate and later removed, the subsection retained its original form until enactment. In H. R. 8539 it appeared as section 4 (j) and in H. R. 8870 until reported out by the Finance Committee it was designated section 4 (i). The Ways and Means Committe commented on this section in its report:

> This provision is inserted in order to comply with the constitutional requirement that a man's right to do business may not be denied administratively, even in pursuance of a Federal power, without his having his day in court. The provision of the bill is similar to that contained in the Packers and Stockyards Act, the Communications Act, the Securities Act, and the Securities Exchange Act as well as the provision in the internal revenue laws under which appeals are taken from the Board of Tax Appeals. Review is granted in the United States Court of Appeals for the District of Columbia or the Circuit Court of Appeals of the United States where the person resides or has his principal place of business, at his election. Review in the circuit court is thought to be more desirable than review in the district court in order that there may not be the delay and expense consequent upon a lawsuit in the district court and appeal from that court's action to the circuit court of appeals. Further, review of the order is in substance an appellate function which is not within the usual scope of district court jurisdiction but rather within that of the circuit court of appeals. Review is limited to questions of law as required by the Constitution in

the case of a constitutional court in accordance with the principles laid down in *Old Colony Trust Co.* v. *Commissioner of Internal Revenue* (1929) (279 U. S. 716); *Federal Radio Commission* v. *General Electric Co.* (1930) (281 U. S. 464); and *Federal Radio Commission* v. *Nelson Brothers Bond & Mortgage Co.* (1933) (289 U. S. 266). Provision is made, however, by which additional evidence may be adduced before the Administrator even after the case is in court. Appeal from the decision of the court of appeals may be had by certification or certiorari to the Supreme Court of the United States. The court proceedings are to operate as a stay of the order of the Administrator unless the court otherwise directs (H. Rept. 1542, Federal Alcohol Controll Bill, p. 9).

At the Ways and Means Committee hearings, Mr. Dingell of the committee criticized this subsection on the grounds that the district courts were not open to appellants. Mr. Choate stated that going straightway to the circuit court of appeals shortened the proceedings; that it was a compromise between making appellants come to Washington to sue and letting them delay proceedings indefinitely (record of hearings, pp. 21 and 22). Congressman Celler, appearing as a witness, raised the same point and urged the procedure used in the Volstead Act of reviews by writs in equity to the district courts. Appellants should not have to pay the higher costs and the increased traveling expenses involved in going to the circuit courts of appeal (record of hearings, pp. 91–93). He raised the same plea at the Finance Committee hearings supported by a letter from the Department of Justice and the additional argument of not crowding the secondary courts (record of Finance Committee hearings, pp. 143–145). An amendment offered by Mr. Celler on the floor of the House in this connection was, after considerable debate between Mr. Celler and Mr. Vinson, rejected (Cong. Rec., vol. 79, no. 152, pp. 12262–12264).

Senator Copeland, of New York, inquired, when the bill was debated in the Senate, whether the committee had considered the advisability of having appeals taken to the district court instead of to the court of appeals:

> Mr. George. Mr. President, I may say that none of the committee amendments deals with the precise question now raised by the distinguished Senator from New York, but the question he raises was presented to the committee by Representative Celler, of New York, and the committee gave due consideration to it. There is some force in the suggestion; but it was the view of the committee, at least at the time, that the jurisdiction to consider and to review any action taken by the Federal Alcohol Commission denying to a permittee or an applicant a permit, or modifying or changing or revoking it, should be vested in the circuit court of appeals, notwithstanding some slight increase in cost to the litigant, because it was deemed advisable to leave the jurisdiction in that particular court in order that we might remove as far as possible from local influences the decision of matters of this character involved in the regulation of the manufacture and sale of distilled spirits.

Mr. HARRISON. Mr. President, will the Senator yield?

Mr. COPELAND. I yield.

Mr. HARRISON. In further answer to the Senator from New York in connection with this question, I may say that with reference to appeals in the cases involved here the committee followed the same policy which was adopted in the case of the Packers and Stockyards Act, the Communications Act, the Securities Act, and the Securities Exchange Act. The committee did not believe it would involve very great additional expense and thought probably the district courts were so clogged with litigation that a man who might wish to appeal could secure quicker action in this way.

Mr. COPELAND. I take it, then, that the feeling of the committee is that the procedure recommended here is parallel with the procedure in reference to appeals from other governmental agencies.

Mr. GEORGE. As recently decided and determined by the Congress.

Mr. COPELAND. The point which was raised involved not alone the question of the expense of going to the circuit courts of appeals, but the suggestion was made to me that the district courts are more readily accessible at all times of the year than are the circuit courts of appeals.

Mr. GEORGE. I think it will be found that appeals of this character could be decided more quickly and finally determined if jurisdiction should be vested in the circuit courts of appeals; and for most purposes, and in most districts, they are as readily available as are the district courts themselves (Cong. Rec., vol. 79, no. 167, p. 13398).

Mr. Dingell also criticized the sixth sentence in this subsection providing that the Administrator's findings of fact shall be conclusive, as too extreme and as giving the Administrator "an ungodly lot of power which should be curbed." Mr. Choate stated that such a provision was usual on appeal from a fact-finding agency. Mr. Vinson, of the committee, pointed out if the appellant wasn't satisfied that the record was complete he could go back and introduce additional evidence before the Administrator and then appeal (record of hearing, pp. 21 and 22). Mr. Celler took up this point in his testimony before the committee as follows:

> Furthermore, I will ask you to look through all your records and all the statutes, and ask you whether you will find anything like this, that the finding of the administrator as to the facts, if supported by substantial evidence, shall be conclusive. I have searched and searched since I have seen this bill, to find any such provision, and I say that if you keep it in—and I say it as one who has studied these propositions as a member of the Judiciary Committee—you will be doing something highly unfair. I doubt very much whether it would stand the test of any court. You would destroy the efficacy of the appeal, because what the Administrator would say with reference to all matters which constitute a code, with reference to the granting or withholding of permits, on good grounds or "coffee grounds", would be abso-

lutely abortive, and you would give the permittee an empty right. I ask you, gentlemen, to think twice before you leave that provision in the statute (record of Ways and Means Committee hearing, p. 93).

In reply it was pointed out that the same provision was found in several recent acts (see quotation from Congressional Record in preceding note).

The words "to the contrary" in the last sentence of the subsection were inserted at the recommendation of the Senate Finance Committee (H. R. 8870, print dated Aug. 9, 1935), passed by the Senate (H. R. 8870, print dated Aug. 13, 1935; Cong. Rec., vol. 79, no. 167, p. 13398), and retained by the conferees (H. Rept. 1898, Revenue From Distilled Spirits, pp. 1 and 11).

(i) No proceeding for the suspension or revocation of a basic permit for violation of any condition thereof relating to compliance with Federal law shall be instituted by the Administrator more than eighteen months after conviction of the violation of Federal law, or, if no conviction has been had, more than three years after the violation occurred; and no basic permit shall be suspended or revoked for a violation of any such condition thereof if the alleged violation of Federal law has been compromised by any officer of the Government authorized to compromise such violation.

NOTE.—This subsection did not appear in Mr. Doughton's bill, but originated in Mr. Cullen's bill (H. R. 8870, print dated July 16, 1935, p. 14) as section 4 (j). The subsection is merely restated in the Ways and Means Committee's report (H. Rept. No. 1542, p. 9).

The Senate Finance Committee recommended that the words "or agency" be inserted immediately after the phrase "compromised by any officer" in the last portion of this subsection (H. R. 8870, print dated Aug. 9, p. 17). This change was approved by the Senate (H. R. 8870, print dated Aug. 13, p. 17), but was not accepted by the managers for the House. (H. Rept. No. 1898, Revenue From Distilled Spirits, p. 1).

UNFAIR COMPETITION AND UNLAWFUL PRACTICES

SEC. 5. It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate:

NOTE.—At the hearings before the Ways and Means Committee on H. R. 8539, Mr. James R. Nicholson representing the Ruppert Brewery and presenting the views of a committee elected by a convention of 496 brewers, opposed the incorporation of fair trade practice provisions into the Act on the ground that conditions in the brewing industry were still so unsettled that it was impossible to tell just what provisions would be found equitable and maintainable. He pointed out that similar provisions in the Brewers Code of Fair Competition were repeatedly amended. Penalties for violation of these provisions hit the brewers doubly hard since producing malt beverages is a continuous process and the shutting down of a plant for even a short time would result in great loss (Record of Hearings pp. 61–63). A brief submitted by Mr. John C. Bruckmann, former chairman of the Brewers' Code Authority, stated a similar position and presented the additional objection that the brewers had had no contact with the drafting of the bill. He suggested that the brewers be given a year to offer concrete suggestions relative to fair trade practice provisions to be written into a statute (id. pp. 64–65). The provisions of section 5 are, in the main, derived from similar prohibited practices in the various codes of fair competition for the alcoholic beverage industries.

The following quotation from Mr. Cullen's remarks when he submitted the bill, has reference to these provisions in the act.

> This bill provides for Federal regulation of the liquor industry. It has as its major objectives the protection of the Federal revenue and the prevention of the recurrence of those evils in the liquor traffic which existed prior to and after prohibition. No provision of the bill is violative of the Constitution either because it denies a fundamental right secured by the Constitution or because it invades a field of regulation reserved by the Constitution to the States. Further, wherever power is granted by the bill to put into effect a policy contemplated by the bill, discriminating language has been used, so that the bill, if enacted, will not suffer from the infirmity of invalid delegation of legislative power.
>
> The Ways and Means Committee held hearings on the subject matter of the bill. These hearings and previous hearings on the Liquor Taxing Act and the studies and reports in connection therewith, and hearings on H. R. 8001 and on the N. R. A. extension bill, furnished a basis upon which deliberate and thoughtful consideration could be devoted to the problems which this bill is designed to meet.
>
> The committee sessions disclosed that it is necessary by some method of Federal control to provide means by which unscrupulous racketeers may be prohibited from entering or remaining in the liquor business. Until we can do that the Government's efforts to collect the revenue to which it is entitled will be frustrated at least in part. Further, we must do something to prevent the unfair trade activities of those in the industry who chisel and take advantage of the ignorance of the consumer by dishonest labeling and advertising and by preying on the weakness of others in the industry. Finally, we must do something to supple-

ment legislation by the States to carry out their own policies. The liquor industry is too big and the constitutional and practical limitations on the States are so considerable that they alone cannot do the whole job (Cong. Rec. Vol. 79, No. 151, p. 12178.)

* * * * * * *

The committee felt that the experience under the voluntary N. R. A. codes with the brewers was sufficient to warrant the hope and expectation that they would conduct their business in such a fashion that, for at least an experimental period, the drastic requirement that they have a license or permit prior to engaging in business need not be imposed upon them at this time (ib.).

* * * * * * *

Unfair and unlawful trade practices are prohibited by the bill. This control extends to prohibition on the "tied house", exclusive outlets, dishonest payments to buyers which amount to bribes, deceptive names, and consignment sales, and to labeling and advertising requirements designed to prevent deception of the consumer.

Adequate court review of action of the Administrator in connection with permits and prohibitions on unfair and unlawful practices is provided for.

It is believed that this bill will furnish a systematic and carefully conceived basis for proper Federal control of those matters connected with the liquor industry which imperatively require supervision by the United States. It is also believed that proper machinery has been provided in it by which administration will be easy and workable. Finally, no hardship will be imposed on legitimate industry by the bill. Nothing in it is unfair or discriminates against the honest business man who is trying to conduct his business in a fair and reasonable manner (id., p. 12179).

The scope of section 5 is mentioned in the Ways and Means Committee's report:

Section 5 of the bill enumerates six specifically defined unlawful practices. The prohibition of these practices is based primarily on the commerce clause and in some instances on the twenty-first amendment and the postal power. The section applies to distillers, rectifiers, blenders, and other producers of distilled spirits, wine, or malt beverages, importers and wholesalers of distilled spirits, wine, or malt beverages, and bottlers and warehousemen and bottlers of distilled spirits. The provisions are applicable to the persons engaged in such businesses whether the unlawful practices are engaged in directly by them or engaged in indirectly or through an affiliate as defined in the bill. (H. Rept. no. 1542, Federal Alcohol Control Bill, p. 10.)

The Finance Committee in its report referred briefly to the background that made the inclusion of fair trade practice provisions seem advisable:

The House bill (sec. 5) prohibited two classes of trade practices. The first class of these prohibited practices were those

which tended to produce monopolistic control of retail outlets, such as arrangements for exclusive outlets, creation of tied houses, commercial bribery, and sales on consignment or with the privilege of return. The reports of the National Commission on Law Observance and Enforcement (Wickersham Commission) and of other agencies that conducted surveys of liquor enforcement problems, all indicated that control by producers and wholesalers of retail outlets through the various devices such as those prohibited by the bill has been productive not only of monopoly but also of serious social and political evils which were in large measure responsible for bringing on prohibition. The bill seeks to prevent the recurrence of these evils in the fields that cannot be reached by the States, provided the evils occur in interstate commerce or reach such an extent in the particular case that they constitute a substantial restraint on interstate commerce or deterrent to the free flow of interstate commerce in distilled spirits and wines (S. Rept. No. 1215, Federal Alcohol Control Act, pp. 6 and 7).

In its original form in H. R. 8539 the introductory clause in section 5 read as follows:

> SEC. 5. It shall be unlawful for any distiller, brewer, rectifier, blender, or other producer, or any importer or wholesaler, of distilled spirits, wine, or malt beverages, or any bottler, or warehouseman and bottle, of distilled spirits, directly or indirectly or through an affiliate (H. R. 8539, print dated June 18, 1935).

The present language appeared in H. R. 8870 when introduced by Mr. Cullen (H. R. 8870, print dated July 16, 1935), and, except for clerical changes made by the Senate and later withdrawn, it was not changed while it was before Congress.

(a) Exclusive outlet: To require, by agreement or otherwise, that any retailer engaged in the sale of distilled spirits, wine, or malt beverages, purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such requirement is made in the course of interstate or foreign commerce, or if such person engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such requirement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce; or

NOTE.—This subsection appeared in the same form in Mr. Doughton's bill (H. R. 8539), the only difference being that the word "actual" was used in place of the word "direct" as limiting the phrase "effect of such requirement" in the last clause. It appeared in its present form in Mr. Cullen's bill (H. R. 8870) and, except for clerical changes in the Senate due to the elimination of malt beverages from the bill, retained its original form.

With reference to the type of commerce affected by the unfair practices prohibited by section 5 of the act, the Ways and Means Committee's report contains the following statement:

> It should be noted in each instance that the unfair practices above referred to are prohibited only under those circumstances where they occur in the course of interstate or foreign commerce, or are engaged in to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce, or where the direct effect of the practices is to prevent, deter, hinder, or restrict other persons from selling or offering for sale their products in interstate or foreign commerce. The practices here involved are analogous to those prohibited by the antitrust laws (H. Rept. No. 1542, Federal Alcohol Control Bill, p. 12).

The intent of Congress to closely limit the application of the act to the field of interstate commerce is demonstrated in both committee reports. The following excerpt from the report of the Finance Committee is also to be found in the report of the Ways and Means Committee (H. Rept. No. 1542, Federal Alcohol Control Bill, pp. 1–3).

> The bill is founded on the principle that, for the protection of the public and adequate conservation of the revenue, Federal regulation is necessary. These industries are Nation-wide in their extent, profoundly affect many phases of national life, and present problems national in their scope. State regulation is inadequate, by reason of practical and constitutional limitations, to meet the problems presented. Federal regulation, in the field in which the Constitution permits the exercise of Federal authority, is necessary to deal with these problems.
>
> Experience prior to prohibition demonstrated that the individual States, by reason of the diversity of their laws and the fact that practically all alcoholic beverage producers and large-scale distributors did an interstate business, could not alone provide those safeguards necessary for the protection of the revenue of the United States, prevent the use of the facilities of interstate and foreign commerce and the mails to carry on unlawful and deceptive practices, and protect their own citizens from the evils which are always present in an inadequately regulated liquor traffic. That situation holds true today. Further, during prohibition, unscrupulous persons entered into the liquor business with the consequences known to all. The bootlegger and the racketeer have not yet disappeared from our national life. Under existing Federal law there is no means of keeping the criminal from entering the legalized liquor field. The executive branch of the Government (except to a limited extent in

the case of distilleries) is powerless to prevent the most notorious criminal from entering into the business of production or distribution of alcoholic beverages. The revenue cannot be adequately protected, the "tied-house" control cannot be curbed, the public cannot be protected from unscrupulous advertising, the consumer cannot be protected from deceptive labeling practices: in short, the legalized liquor traffic cannot be effectively regulated, if the door is left open for highly financed gangs of criminals and racketeers to enter into the business of liquor production and distribution.

Even if the present Federal law were adequate to prevent the criminal from entering the liquor field, there would still remain the problem of control of the unethical minority in the business, the activities of which are beyond State power and require regulation in the public interest. The internal revenue, Federal trade, and food and drug laws are insufficient for this purpose. Protection of the consumer and the elimination of improper practices in this industry are imperative, and additional legislation to accomplish these purposes is necessary (S. Rept. No. 1215, Federal Alcohol Control Act, pp. 1 and 2).

During Mr. Choate's testimony before the Ways and Means Committee, Congressman Duncan of the committee questioned Mr. Choate on the applicability of this section in intrastate transactions:

Mr. DUNCAN. Mr. Chairman, I would like to ask Mr. Choate a question on page 14 of the bill, with respect to unfair trade practices. Apparently, of course, it is the intention that that will only apply to interstate commerce?

Mr. CHOATE. Yes.

Mr. DUNCAN. And is it the intention of the administration, however it may be set up, to control intrastate commerce or business through the licensing provisions of the bill?

Mr. CHOATE. No, except to this extent, that the permit sections are in a measure independent of the interstate commerce feature. As a means of keeping industry clean, that is, making the industry the kind of industry which will obey the revenue laws and the twenty-first amendment, the permit provisions can properly operate irrespective of interstate commerce, but if you will notice, it is only the sales in interstate commerce which are covered by the permit provision, engaging in the business of manufacturing and selling in interstate commerce.

Mr. DUNCAN. In paragraph (b), line 15, on page 14——

Mr. CHOATE. Of course, that is not in the permit provisions at all. You are now dealing with the unfair competition provision.

Mr. DUNCAN. Unfair competition, yes, but of course your jurisdiction would also go to interstate transactions?

Mr. CHOATE. Yes.

Mr. DUNCAN. Unless you did control through the permit provision.

Mr. CHOATE. Yes, sir.

Mr. DUNCAN. Now, with respect to breweries or distilleries or liquor dealers, furnishing fixtures or signs, or financing retailers,

supposing the breweries or distillers are located in States having a number of large cities, where there would be no interstate features, what would be the effect on those breweries or distilleries, becoming interested in the retail or outlet store?

Mr. CHOATE. That would have to be taken care of entirely by the State legislation.

Mr. DUNCAN. So, if a brewery in a large State saw fit to lease or furnish fixtures or equipment to the retailers, they would have a permit, right under this act, to do that?

Mr. CHOATE. Yes. I do not think any Federal legislation can prevent that, but in order to make the State's own legislation of that kind effective, you must have Federal legislation to prevent the brewer or the seller in the State next door tying up the house within the State in question (Record of Ways and Means Committee hearings on H. R. 8539, pp. 26 and 27).

A brief discussion of the application of the unfair competition provisions to intrastate transactions took place between Mr. Corrigan, representing the Wisconsin State Brewers Association, and Senator Connally, of the Senate Finance Committee, at the hearings on the bill (Record of hearing on H. R. 8870, pp. 124–127).

(b) "Tied house": To induce through any of the following means, any retailer, engaged in the sale of distilled spirits, wine, or malt beverages, to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such person engages in the practice of using such means, or any of them, to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce:

NOTE.—The introductory portion of the subsection is just as it appeared in Mr. Doughton's bill (H. R. 8539) except the word "actual" was here used instead of the word "direct" as limiting "effect of such restriction." Only clerical changes were suggested by the Finance Committee and Senate.

With respect to this subsection the report of the Ways and Means Committee contains the following paragraph:

> The foregoing practices [note, those prohibited by this subsection] have in this industry constituted the principal abuses whereby interstate and foreign commerce have been restrained

and monopolistic control has been accomplished or attempted. The most effective means of preventing monopolies and restraints of trade in this industry is by prohibiting such practices, thereby striking at the causes for restraints of trade and monopolistic conditions and dealing with such conditions in their incipiency.

Furthermore, such abuses were so prevalent before prohibition that they were regarded in a large measure as responsible for the evils which led to prohibition. (See report of the National Commission on Law Observance and Enforcement (1931), H. Doc. No. 722, 71st Cong., 1st sess., p. 6; and Fosdick and Scott, Toward Liquor Control (1933), pp. 42–43.) The prohibition of these practices will, accordingly, not only prevent monopoly and restraint of interstate trade but will also tend to eliminate or mitigate certain incidental social evils, such as those which have necessarily followed the forced increase in alcoholic-beverage sales resulting from the "tied house." The majority of the industry members have come to accept the view that it is unfair for any of their number to resort to practices which result in such social evils, since other members of the industry are thereupon compelled likewise to engage in such practices if they are to retain their business, and as a result the entire industry is brought into disrepute. (H. Rept. No. 1542, Federal Alcohol Control Bill, pp. 11 and 12).

Congressman Treadway, of Massachusetts, representing the minority members of the Ways and Means Committee in the discussion of the reported bill on the floor of the House, said inter alia:

> Now, there are two provisions in the measure to which I want very briefly to refer. One is found on page 15, subsection (b). Probably some of the Members wondered what the meaning may be of "tied house", the first two words under (b). To my mind that is one of the best features in this bill if it accomplishes what it is intended to accomplish. Subsection (b) is intended to prevent distillers, brewers, and wholesalers controlling the dispensation of whisky or beer, as the case may be, by exercising dominion and control over the place at which the liquor is sold.
>
> I think that is extremely desirable, and I commend the committee for having written in that provision which I hope the administrator later on can enforce. I feel that the method whereby the distiller and brewer controlled the dispensing of liquor and beer was one of the great reasons that brought on prohibition. We certainly do not want to see that repeated. So I thoroughly approve of that section. (Cong. Rec., vol. 79, no. 151, pp. 12181 and 12182).

Some consideration of the application of this subsection to brewers doing an intrastate business will be found in the testimony of Mr. Donnelly, representing the shipping brewers, before the Finance Committee (Record of Senate Finance Committee Hearings on H. R. 8870, pp. 115 and 116). Additional consideration is given in the memorandum filed with the committee by George R. Beneman, representing the United States Brewers Association (id. pp. 97 and 98).

The following statement relating to the class of retailers affected by this subsection appears in the Finance Committee report:

> The tied-house provisions, it should be noted, relate to the acquisition by industry members of control over theretofore independent retail establishments and do not prohibit industry members from continuing to operate retail outlets heretofore established by them and wholly owned and operated by them, nor the establishment by industry members of new retail outlets of such character (S. Rept. No. 1215, Federal Alcohol Control Act, p. 7).

(1) By acquiring or holding (after the expiration of any existing license) any interest in any license with respect to the premises of the retailer; or

NOTE.—This clause appeared in Mr. Doughton's bill (H. R. 8539) and was not amended by either House of the Congress. At the hearings before the Finance Committee Judge Marion De Vries, representing the Wine Institute, suggested that this clause and the rest of the subsection be amended so that it restricted only the "tying" of retailers selling for consumption on the premises and allowed industry members to engage in the sale of their products for consumption off the premises. (Record of Hearings of Senate Finance Committee on H. R. 8870, pp. 130 and 131). A similar suggestion has been made by Frank A. Coleman, president of the National Wholesale Wine and Liquor Dealers Association (Record of Ways and Means Committee Hearings on H. R. 8539, p. 67). Mr. Vinson stated:

> Mr. VINSON. You would not advocate an abolition of that section dealing with tied houses, going back to all the abuses in the preprohibition days?
>
> Mr. COLEMAN. I would object to it in the way it is written here. If I remember rightly, it merely mentions the retailer.
>
> Mr. VINSON. The retailer is the fellow whose house is tied in with the brewery or distillery?
>
> Mr. COLEMAN. There is a distinction between the retailer for consumption on the premises and a retailer for bottling-house goods.
>
> Mr. VINSON. You know what the purpose of the tied house is?
>
> Mr. COLEMAN. Yes, sir.
>
> Mr. VINSON. It is to control the abuses that had a lot to do with bringing on prohibition. Is not that true?
>
> Mr. COLEMAN. That is correct (id. p. 71).

(2) by acquiring any interest in real or personal property owned, occupied, or used by the retailer in the conduct of his business; or

NOTE.—In H. R. 8539, as introduced by Mr. Doughton, this clause read "(2) by acquiring any interest in any premises of the retailer; or." The above wording was offered as a committee amendment by

Congressman Buck of California, a member of the Ways and Means Committee, and agreed to by the House. (Cong. Rec. vol. 79, No. 152, p. 12267).

(3) by furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services, or other thing of value, subject to such exceptions as the Administrator shall by regulation prescribe, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest and the purposes of this subsection; or

NOTE.—In H. R. 8539 this clause read:

(3) by furnishing, giving, renting, lending, or selling to the retailer any equipment, fixtures, signs, supplies, money or other thing of value, except advertising specialties; or (H. R. 8539, print dated June 18, 1935).

The present language first appeared in the bill introduced by Mr. Cullen (H. R. 8870, print dated July 16, 1935). Congressman Buck suggested, as a committee amendment, the insertion of the word "services" after the word "money", and the House agreed to the amendment (Cong. Rec., vol. 79, no. 152, p. 12267).

At the hearings on the bill before the Congressional committees there was considerable discussion concerning the interpretation of the prohibition placed on the furnishing of signs. Dr. Doran, in the brief filed at the hearing of the Ways and Means Committee (record of hearings, p. 111), suggested the section be clarified to show clearly that ordinary advertising material might be furnished with impunity. Congressman O'Malley, of Wisconsin, offered on the floor of the House an amendment allowing the furnishing of signs costing collectively not more than $100 per year per retail outlet. (Cong. Rec., vol. 79, no. 152, p. 12267.) The amendment, he said, would protect the little brewer against the big brewer who could spend almost unlimited sums in advertising. It would also prevent the Administrator from barring the furnishing of signs altogether and thereby injuring the sign industry. He said, in part:

> I have sought enlightenment upon what this section does from many members of the committee, and everyone I have talked to has agreed that, as this section is written, no limitation is placed on the amount of advertising material which may be furnished retailers by brewers and distillers so long as no agreement is entered into for exclusive outlet. If the chairman were to tell what transpired in the committee he would agree with me that there was a very sharp division on this particular point, and I am reliably informed that this very proposition contained in my amendment lost in committee by only one vote. I think we should take out of here by the adoption of my amendment the possibility of discrimination and hardship in the use of

advertising that this section works upon the small producer who certainly needs some help and not hindrance in endeavoring to compete for the sale of his product (id., p. 12268).

The amendment was bitterly opposed by Congressman Vinson of the committee, who said it would encourage the evils of the tied house. The amendment was rejected by the House (id. p. 12269). Mr. Beneman filed a brief at the Finance Committee hearings suggesting that the clause be revised to permit the furnishing of anything permitted to be furnished by State law. (Record of Finance Committee hearing on H. R. 8870, p. 99.) Mr. Hodges, representing the Advertising Metal Sign and Display Manufacturers Association, testified at the latter hearings that his industry would feel more secure if the provision allowed industry members to furnish retailers up to $100 worth of signs in any one year (id. pp. 63–65). Mr. O'Connor, of the Beer Division of the Wholesale Code Authority, expressed himself as being in favor of an absolute prohibition against the furnishing of anything (id. p. 140). The Finance Committee proposed, and the Senate agreed to, amendments to this section specifically excepting "signs not exceeding $100 in aggregate value to any retailer in any calendar year" and "advertising specialties and graphic arts advertising items of paper or paper-like substance" (H. R. 8870, prints dated Aug. 9 and Aug. 13, 1935). The Senate receded from these amendments as a result of the conference (H. Rept. No. 1898, Revenue From Distilled Spirits, p. 11).

(4) by paying or crediting the retailer for any advertising, display, or distribution service; or

NOTE.—This clause appeared in the same form in H. R. 8539 as introduced by Mr. Doughton and was not changed or amended.

(5) by guaranteeing any loan or the repayment of any financial obligation of the retailer; or

NOTE.—This clause appeared in the same form in H. R. 8539 as introduced by Mr. Doughton and was not changed or amended.

(6) by extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions, as ascertained by the Administrator and prescribed by regulations by him; or

NOTE.—This clause appeared in the same form in H. R. 8539 as introduced by Mr. Doughton. When H. R. 8870 (Mr. Cullen's bill) was debated on the floor of the Senate, Senator Tydings of Maryland offered an amendment striking out the words "to the industry", changing the comma after "transactions" to a period, and striking out the remainder of the clause. He stated the purpose of the amendment to be "to change the wording so that the act may be administered in line with the practices of the business", and further stated that he understood that Mr. Choate was not opposed to the amend-

ment. (Cong. Rec. vol. 79, no. 167, p. 13402.) The amendment was agreed to by the Senate but the Senate receded as a result of the conference (H. Rept. No. 1898, Revenue From Distilled Spirits, pp. 1 and 11). The amendment was originally suggested in the brief filed with the Finance Committee by George R. Beneman representing the United States Brewers Association (Record of Finance Committee hearings on H. R. 8870, p. 99). A similar amendment was suggested by Fred A. Caskey, representing the League of Distilled Spirits Rectifiers Inc., in a letter to Senator Harrison dated July 27, 1935, and included in the Record of the Hearing (id. 148).

(7) by requiring the retailer to take and dispose of a certain quota of any of such products; or

NOTE.—This clause was offered as an amendment by Congressman Lewis, of Colorado, when the bill, as reported by the Ways and Means Committee, was debated before the House in session as the Committee of the Whole. Mr. Lewis made the following statement in connection with the amendment:

> Mr. LEWIS, of Colorado. Mr. Chairman, this is a further restriction on the so-called "tied house" which is regulated under section 5 (b) of this bill. Before prohibition, in our part of the country at least, one of the evils of the liquor traffic was that a retailer was required by the brewer or distiller to take a certain quota of beer or spirits of some private brand as a condition to being allowed to retail that brand. The temptation was often irresistible for the retailer to induce customers to buy drinks when they had already had quite enough. This was a very great evil, as I believe the members of the committee will concede. I think this is an important amendment to this bill. I hope the committee will accept the amendment.
>
> The CHAIRMAN. The question is on the amendment offered by the gentleman from Colorado (Mr. Lewis). The amendment was agreed to (Cong. Rec., vol. 79, no. 152, p. 12270).

(c) Commercial bribery: To induce through any of the following means, any trade buyer engaged in the sale of distilled spirits, wine, or malt beverages, to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such person engages in the practice of using such means, or any of them, to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to

prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce: (1) By commercial bribery; or (2) by offering or giving any bonus, premium, or compensation to any officer, or employee, or representative of the trade buyer; or

NOTE.—This subsection appears in the same form in the bill as introduced by Mr. Doughton (H. R. 8539, print dated June 18, 1935) except that in the phrase "direct effect of such inducement" the word "direct" has been substituted for the word "actual." Although clerical amendments were made by the Senate, these were withdrawn as a result of the conference report.

As to type of commerce affected by this subsection, see note to subsection (a) of section 5 above.

(d) Consignment sales: To sell, offer for sale, or contract to sell to any trade buyer engaged in the sale of distilled spirits, wine, or malt beverages, or for any such trade buyer to purchase, offer to purchase, or contract to purchase, any such products on consignment or under conditional sale or with the privilege of return or on any basis otherwise than a bona fide sale, or where any part of such transaction involves, directly or indirectly, the acquisition by such person from the trade buyer or his agreement to acquire from the trade buyer other distilled spirits, wine, or malt beverages—if such sale, purchase, offer, or contract is made in the course of interstate or foreign commerce, or if such person or trade buyer engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such sale, purchase, offer, or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce: *Provided,* That this subsection shall not apply to transactions involving solely the bona fide return of merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold; or

NOTE.—This subsection appeared in H. R. 8539 as introduced by Mr. Doughton in the following form:

(d) *Consignment sales.*—To sell, offer for sale, or contract to sell to any trade buyer engaged in the sale of distilled spirits, wine, or malt beverages, any such products on consignment or conditionally or with the privilege of return or on any basis otherwise than a bona fide sale, if such person makes such sale, offer, or contract in the course of interstate or foreign commerce, or if such person engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the actual effect of such sale, offer, or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce; or (H. R. 8539, pp. 15 and 16).

At the Ways and Means Committee hearing Frank A. Coleman, president of the National Wholesale Liquor Dealers Association, objected to this provision on the ground that, if not rigorously enforced, the law-abiding industry member would suffer at the hands of less scrupulous competitors (Record of Ways and Means Committee hearing on H. R. 8539, pp. 71 and 72).

Morris O. Alprin, testifying before the committee as counsel for the Wholesale Wine and Spirits Merchants Association of New York, stated that some of the State agencies were "practically coercing" members to take unsalable merchandise produced by others in part payment of their bills, or as condition to the offering of further orders. He further stated that one State agency would only purchase on a basis that was "practically" a consignment sale. At the request of Mr. Doughton, Mr. Choate substantiated Mr. Alprin's statement and said that the same rules ought to apply to States as to individuals (id. 80–88).

The following excerpt from the report of the Ways and Means Committee relates to this subsection:

> In connection with the prohibition on consignment sales (sec. 5 (d)) it is to be noted that the provision relates to the buyer as well as the seller. The other provisions discussed above relate only to conduct by the seller. It has been brought to the attention of the committee that certain large buyers are in such a strategic position with respect to sellers that they often have sufficient economic power to compel the sellers to deal with them on a consignment or return basis. Buyers less powerful are unable to exact such terms from the seller. Such situations are in practical effect not essentially different from the exaction of price discriminations in favor of the large trade buyer. Accordingly the committee felt that the trade buyer ought to be included within the consignment-sale prohibition. The provision is broad enough to include not only the case where the seller agrees in a single transaction to take back undesirable goods in consideration for the sale of other goods but also cases in which, in form, separate transactions have occurred but which are in substance one transaction. The consignment sale provision is made to apply to sales and purchases by State agencies. The constitutionality of applying such regulation to State agencies is sustained by the cases of

South Carolina v. *U. S.* (1905) (199 U. S. 437); *Ohio* v. *Helvering* (1934) (292 U. S. 360); and *Helvering* v. *Powers* (1934) (293 U. S. 214) (H. Rept. No. 1542, Federal Alcohol Control Bill, p. 11)

In the bill introduced by Mr. Cullen (H. R. 8870, print dated July 16, 1935), the subsection appeared in its present form except that the proviso at the end was omitted.

At the hearing before the Finance Committee, Howard T. Jones, counsel for the Distilled Spirits Institute, Inc., filed a memorandum in letter form which contained the suggestion that a similar proviso be added at the end of the subsection since normal commercial intercourse sometimes necessitates the return of merchandise (record of hearings before the Finance Committee on H. R. 8870, p. 88). The proviso at the end of the subsection was added without discussion by an amendment offered by Senator Tydings, of Maryland, during the debate in the Senate on the bill after it was reported out by the Finance Committee (Cong. Rec., vol. 79, no. 167, p. 13402). The conferees agreed to its incorporation in the act (H. Rept. No. 1898, Revenue From Distilled Spirits, pp. 1 and 11).

(e) Labeling.—To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, with respect to packaging, marking, branding, and labeling and size and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer;

NOTE.—The language of the introductory portion of this subsection and of clause (1) remained as they appeared in H. R. 8539 as introduced by Mr. Doughton on June 18, 1935, except for clerical changes, afterwards withdrawn, made in the Senate. Mr. Choate made the following statement as to the general purpose of this, and the subsection immediately following, at the hearings before the Ways and Means Committee on H. R. 8539:

> Now, the provisions of this bill show that the purpose was to carry that regulation into certain particular fields in which control of interstate commerce in liquors was paramount and necessary. The purpose was to provide such regulations, not laid down

in statute, so as to be inflexible, but laid down under the guidance of Congress, under general principles, by a body which could change them as changes were found necessary.

Those regulations were intended to insure that the purchaser should get what he thought he was getting, that representations both in labels and in advertising should be honest and straightforward and truthful. They should not be confined, as the pure-food regulations have been confined, to prohibitions of falsity, but they should also provide for the information of the consumer, that he should be told what was in the bottle, and all the important factors which were of interest to him about what was in the bottle (Record of hearing, p. 10).

A general summary of these subsections and of the scope of the regulations issued pursuant thereto is found in the report of the Ways and Means Committee on H. R. 8870:

The labeling and advertising provisions (sec. 5 (e) and (f)) prohibit the use of interstate channels when labeling or advertising of distilled spirits, wine, or malt beverages does not conform to regulations, with the force and effect of law, prescribed by the Administrator. Definite standards are laid down for these regulations. The regulations are not only required to prohibit labeling and advertising that is false, misleading, obscene, or indecent, or that disparages competitors' products, but must also provide for the prevention of deception of the consumer with respect to the product or its quality. They must also prohibit, regardless of their truth, statements relating to age, manufacturing process, analyses, guaranties, and scientific or irrelevant matters that the Administrator finds likely to mislead the consumer, and must make provision for informing the consumer adequately as to the identity and quality of the product, its alcoholic content, the net contents of the package, and the person responsible for the package or the advertisement (H. Rept. No. 1542, Federal Alcohol Control Bill, p. 12).

It was suggested at the Ways and Means Committee hearings that clause (1) be revised to cut out the phrase "as the Administrator finds will be likely to" and insert in lieu thereof "as will be likely to" (letter of Rectifiers' and Blenders' Association of New Jersey, Inc., brief filed by Mr. Caskey, record of hearing, p. 115). The same suggestion was made in the brief of George R. Beneman, representing United States Brewers Association, filed at the hearings of the Finance Committee (record of hearings on H. R. 8870, p. 99). The purpose of the change was stated to be to prevent arbitrary rulings by the Administrator and to open the courts to appellants on the question as to whether the labels were in fact misleading. The suggested change was not adopted by either of the committees.

(2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except that statements of, or

statements likely to be considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by State law and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or importer of the product;

NOTE.—In H. R. 8539 introduced by Mr. Doughton on June 18, 1935, clause (2) of subsection 5 (e) reads as follows:

> (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except in case of wines, and except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by State law), the net contents of the package, and the manufacturer or bottler or importer of the product (H. R. 8539, print dated June 18, 1935, pp. 16 and 17).

At the hearings before the Ways and Means Committee, Mr. Lourie, representing the Association of Alcoholic Beverage Importers, suggested in his brief that the exception with respect to the statement of alcoholic content on wine labels be modified to require a statement on wines containing more than 14 percent of alcohol so that the consumer may differentiate readily between "light wines" and "fortified wines" (record of hearings on H. R. 8539, pp. 112 and 113). This suggestion was followed in the drafting of Mr. Cullen's bill (H. R. 8870) and the exception appeared in that bill in the form finally enacted. The report of the Ways and Means Committee contains the following statement with respect to clause (2):

> Alcoholic content is required to be stated in connection with wines only if alcoholic content is above 14 percent by volume, and is optional in case of other wines. Alcoholic content is prohibited from being stated in the case of malt beverages. Malt beverages should not be sold on the basis of alcoholic content. The variation of alcoholic content has little consumer importance and the industry recognizes that attempts to sell beer and other malt beverages on the basis of alcoholic content are attempts to take advantage of the ignorance of the consumer and of the psychology created by prohibition experiences.
>
> Legitimate members of the industry have suffered seriously from unfair competition resulting from labeling and advertising that uses such terms as "strong", "extra strength", "high-test", "high proof", "prewar strength", "14 percent original extract", and from brand names or other statements or references which include conspicuous numerals or symbols intending to suggest that the numerals or symbols represent the alcoholic content. Usually such respresentations of excess alcoholic content are false, but irrespective of their falsity, their abuse has grown to such an extent since repeal that the prohibition of all

such statements is in the interest of the consumer and the promotion of fair competition (H. Rept. No. 1542, Federal Alcohol Control Bill, pp. 12 and 13).

In briefs filed with the Senate Finance Committee at the hearings on H. R. 8870, it was suggested by Mr. Beneman, representing the United States Brewers' Association, and by Mr. Jones, counsel for the Distilled Spirits Institute, that the words "or distributor" be added after the word "manufacturer" in the latter part of clause (2) to protect trade marks and private brands of distributors. The Finance Committee suggested, and the Senate agreed to, the elimination of the words "importer of the product" and the incorporation of "distributor of domestically bottled products and the manufacturer and importer of imported products." The Senate also eliminated all reference to malt beverages in the clause. The Senate receded on both amendments as a result of the conference (H. Rept. No. 1898, Revenue From Distilled Spirits, pp. 1 and 11).

(3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled;

NOTE.—As it appeared in the bill introduced by Mr. Doughton, clause (3) omitted the parenthetical expression "(other than cordials, liqueurs, and specialties)" and ended with the phrase "the commodity from which such neutral spirits have been distilled."

In the brief filed with the Ways and Means Committee at the hearings on H. R. 8539, Mr. Lourie, representing the Association of Alcoholic Beverage Importers, stated that the percentage of neutral spirits used and the commodity from which such neutral spirits were produced should not have to appear on labels of gin, cordials, and liqueurs since such products are commonly recognized as always being made from neutral spirits, plus additional flavors (record of hearings before the Ways and Means Committee on H. R. 8539, p. 112). Fred A. Caskey, representing the League of Distilled Spirits Rectifiers, Inc., made a similar recommendation (id. pp. 114 and 115).

The parenthetical expression was inserted in clause (3) in H. R. 8870 as introduced by Mr. Cullen on July 16, 1935. The Ways and Means Committee's report with respect to this clause reads:

> The labeling and advertising requirements also compel statements as to the percentage of neutral spirits used in distilled spirits (including gin), except in case of liqueurs, cordials, cock-

tails, gin fizzes, highballs, bitters, and other specialties. This is for the purpose of informing the consumer of the fact that he is purchasing a product which contains neutral spirits whereas he might think he was obtaining one in which no such spirits were used. Since there is in some cases a consumer preference for neutral spirits made out of grain rather than other products, the labeling and advertising provisions require, where neutral spirits have been used, a statement of which commodity (whether grain, sugarcane and its products, fruit, or whatever the commodity may be) has been distilled to produce the neutral spirits used (H. Rept. no. 1542, Federal Alcohol Control Bill, p. 13).

When the bill was debated before the House in session as the Committee of the Whole, the following discussion on this clause occurred:

Mr. GILCHRIST. On page 19, that is not the language that was in the former bill. It provided that the label shall contain an accurate statement informing the customer of the presence of neutral spirits, and naming the commodity from which the spirits have been distilled. Does that refer to whisky? Of course, it would not refer to whisky that is not blended.

Mr. CULLEN. Whisky that is not blended is labeled in the bonded warehouse and sent into the market as bonded liquor.

Mr. GILCHRIST. But it does not contain the name of the commodity from which it was distilled.

Mr. CULLEN. No. The propose of labeling the bottle with its ingredients is to show to the consumer that he is at least getting pure material insofar as it relates to liquor.

Mr. GILCHRIST. That is all right. I am not finding any fault. That is, except to say that I think that clause 3 ought to go further than it does here, and apply to all distilled liquors instead of those that are merely blended or rectified.

Mr. CULLEN. That is a matter of opinion.

Mr. GILCHRIST. What does the gentleman say about that?

Mr. CULLEN. The committee went into that and decided that that is as far as they can go.

Mr. GILCHRIST. Does that apply to gin?

Mr. CULLEN. Gin is stricken out.

Mr. GILCHRIST. Suppose I was putting gin in a bottle and selling it, would I have to state on the bottle the commodity from which it was distilled?

Mr. CULLEN. On the label, yes; and gin is very potent, let me tell the gentleman.

Mr. GILCHRIST. It is a distilled, blended liquor.

Mr. CULLEN. Sometimes it is made from aniseed and sometimes it is made from everything (Cong. Rec., vol. 79, no. 151, pp. 12180 and 12181).

Congressman Buck, as a committee amendment, suggested the insertion of the phrase "or in case of gin, whether or not produced by blending or rectification" after the word "rectification" in the first part of the clause (Cong. Rec., vol. 79, no. 152, p. 12267).

At the hearings before the Finance Committee, Mr. Jones, counsel for the Distilled Spirits Institute, recommended the elimination of

this latter amendment since it would not require all types of gin to be labeled with the commodity from which it was produced (record of hearings, p. 88). The Finance Committee recommended the elimination of that amendment and the addition of the phrase which now appears at the end of clause (3), i. e., " or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled." The report of the Finance Committee contains the following statement with respect to this proposed amendment.

> The committee has recommended the insertion of a new provision in the false-labeling and false-advertising provisions so as to make it clear that in the case of gin, whether produced by a process of original distillation in a distillery or by blending or rectification in a rectifying plant, the gin shall show the percentage of the neutral spirits contained therein that are derived from each of the respective raw material sources, such as grain, fruit, and sugarcane and its products such as molasses. The amendment also provides similar requirements as to the source of neutral spirits sold straight without blending. The requirement of the House bill that other blended and rectified distilled spirits, except cordials, liqueurs, and specialties, shall be labeled so as to inform the consumer of the percentage of neutral spirits contained therein and the percentage of such neutral spirits derived from each of the respective commodity sources, is retained without change. (S. Rept. No. 1215, Federal Alcohol Control Act, p. 7).

Senator Murphy, of Iowa, introduced an amendment on the floor of the Senate, striking out the above clause entirely and inserting at the end of the paragraph the following:

> The regulations of the commission shall prohibit the designation of any product as neutral spirits, or as any type of whisky or gin, for nonindustrial use, if the neutral spirits contained therein are distilled from materials other than grain. Such regulations shall also require that the labels of all distilled spirits (other than cordials, liqueurs, and specialties) to which neutral spirits have been added by blending or rectification, and that the labels of all neutral spirits and of gin, for nonindustrial use, whether produced by blending or rectification or by a process of continuous distillation, shall state thereon the percentage of neutral spirits contained therein, the name of the commodity or commodities from which such neutral spirits have been distilled, and the percentage thereof derived from each such commodity. As used herein, the term " neutral spirits " includes ethyl alcohol (Cong. Rec. vol. 79, no. 167, p. 13418).

This amendment was agreed to by the Senate, but later eliminated as a result of the conference. The statement of the managers on the part of the House contains the following summary of the positions taken by the House and the Senate with respect to this clause:

> The House bill provided that the regulations of the enforcement agency with regard to the informative labeling and advertising of distilled spirits provide that in the cases of dis-

tilled spirits (other than cordials, liqueurs, and specialties) there be stated on the label or in the advertisement, as the case might be, the percentage of the neutral spirits used in the production thereof and the name of the commodity from which the neutral spirits were distilled. The provision applied to distilled spirits produced by blending or rectification and to gin, whether produced by blending or rectification or by process of continuous distillation. The provisions did not apply to straight neutral spirits or alcohol produced by process of continuous distillation. The Senate amendments incorporate clarifying provisions making it certain that the informative requirements apply to gin produced by process of continuous distillation as well as by blending or rectification and also extend the requirements to straight neutral spirits or alcohol produced by process of continuous distillation. In addition, the Senate amendment makes it clear that it is mandatory upon the enforcement agency to issue regulations of this informative character and that in case neutral spirits made from two different commodities are included in the product then the percentage made from each such commodity shall be stated.

Senate amendment no. 105 further provides that the regulations of the Commission with respect to labeling and standards of identity shall prohibit the designation of any product as neutral spirits or as any type of whisky or gin, or * nonindustrial use, if the neutral spirits used in making the product are distilled from materials other than grain. This requirement applies to neutral spirits, whisky and gin produced by a process of continuous distillation, as well as to gin or any type of blended or other whisky produced by blending or rectification. The Senate amendment further provides by definition that the term " neutral spirits ", where used throughout the act, is synonomous with ethyl alcohol.

The Senate recedes on amendments nos. 105 and 129 which make the regulations mandatory and which prohibit designation of whisky, neutral spirits, or gin, as such, unless produced from grain. The Senate recedes on amendments nos. 100 and 128 which make changes in numbers in connection with amendments nos. 105 and 129. The effect of the conference agreement is to insert the substance of the House provisions with the addition thereto of provisions similar to those in Senate amendments nos. 105 and 129 under which the requirement is imposed that there be a statement of the commodity from which neutral spirits or gin produced by continuous distillation is produced (H. Rept. No. 1898, Revenue From Distilled Spirits, pp. 11 and 12).

At the debate before the House, Congressman Gilchrist of Iowa argued at some length in favor of a provision aiding the growers of grains by prohibiting the use of blackstrap molasses in the production of beverage spirits. (Cong. Rec., vol. 79, no. 151, pp. 12188. 12195, and 12196.) Amendments to accomplish this purpose were,

* Ed. note.—This apparent error appears in the printed report.

however, voted down (id. p. 12197 and no. 152, pp. 12265, 12269, and 12270). Congressman Dirksen of Illinois spoke in favor of this amendment at the hearings before the Finance Committee (record of hearing, pp. 61–63). Such an amendment was, however, never incorporated in the bill.

(4) as will prohibit statements on the label that are disparaging of a competitor's product or are false, misleading, obscene, or indecent; and

NOTE.—This clause appeared in H. R. 8539 as introduced by Mr. Doughton on June 18, 1935, and was enacted without change.

(5) as will prevent deception of the consumer by use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, and as will prevent the use of a graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been indorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided,* That this clause shall not apply to the use of the name of any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, wine, or malt beverages, nor to the use by any person of a trade or brand name used by him or his predecessor in interest prior to the date of the enactment of this Act;

NOTE.—This clause first appeared in H. R. 8870 as introduced by Mr. Cullen on July 16, 1935, and replaced subsection 5 (f) "*Unfair Name*" in H. R. 8539:

> (f) *Unfair name.*—To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages, under a trade or brand name which the Administrator has found is the name of any individual or organization, if the Administrator has also found that the use of such name is unfair because it is intended or is likely falsely to lead the consumer to

believe that the produce has the indorsement of or is made or used by such individual or organization: or (H. R. 8539, print dated June 18, 1935, p. 19).

The clause was enacted without amendment. The following excerpt from the Ways and Means Committee's report is relevant:

> Further protection is given the consumer by prohibiting the use of trade or brand names of prominent living persons or of organizations. The use of such names frequently leads him to believe that the product behind the label was produced, endorsed, made, or used by, or in certain other ways specified in the bill identified with the individual or organization whose name appears on the label. Abbreviations and other methods of indicating the name of such individuals or organizations are similarly barred. Nothing in the provision restrains the truthful use of a name to the extent to which its use has been authorized or the use of a name used prior to the enactment of the act by the user or a person from whom he secured it through chain of title. The provision does not extend to cases of conflict within the industry as to proprietary rights in trade or brand names (H. Rept. 1542, p. 13).

including regulations requiring, at time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported products:

NOTE.—This clause appeared in H. R. 8539 as introduced by Mr. Doughton on June 18, 1935, and was enacted without change.

Provided further, That nothing herein nor any decision, ruling, or regulation of any department of the Government shall deny the right of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent Office which has been used by such person or predecessors in the United States for a period of at least five years last past, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and, in the case of the use of such name or brand on any label or in any advertisement, if such qualification is as conspicuous as such name or brand.

NOTE.—The first part of this proviso was added by an amendment offered by Senator Johnson, of California, while the bill was being debated on the floor of the Senate. There follows an excerpt from the Congressional Record relating to this amendment:

> Mr. JOHNSON. Mr. President, I desire to offer an amendment.
> Mr. GEORGE. Mr. President, we are proceeding somewhat ir-

regularly, because there are some committee amendments as yet undisposed of, unless there is objection raised by some other Senator, it is quite agreeable to me to have the bill thus considered.

The PRESIDENT PRO TEMPORE. Without objection, the amendment of the Senator from California will be received and will be stated.

The CHIEF CLERK. On page 23, line 17, after the word "products", it is proposed to insert a proviso, as follows:

> *Provided, further*, That nothing herein nor any decision, ruling, or regulation of any Department of the Government shall deny the rights of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent Office which has been used by such person or predecessors in the United States for a period of at least 5 years last past.

Mr. GEORGE. Mr. President, I understand that this amendment is perhaps inspired by a recent ruling of the Federal Trade Commission. It would seem to have a proper and legitimate purpose, and for the committee the amendment is accepted, insofar as I can accept it.

The PRESIDENT PRO TEMPORE. The question is on agreeing to the amendment.

The amendment was agreed to (Cong. Rec., vol. 79, no. 167, p. 13403).

The final language of the proviso was decided upon in conference. The statement of the Managers on the part of the House reads in this connection:

> This amendment provides that nothing in the act or any decision, ruling, or regulation of any Department of the Government shall deny the right of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent Office which has been used by such person or predecessors in the United States for a period of at least 5 years last past. The House bill had no corresponding provision. The House recedes with an amendment inserting the substance of the Senate provision but adding a limitation that if such a name or brand is used its use must be qualified by the name of the locality in the United States in which the product is produced and on labels and in advertising this qualification must be as conspicuous as the name or brand itself (H. R. No. 1898. Revenue From Distilled Spirits, p. 12).

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except

pursuant to regulations of the Administrator authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

NOTE.—The wording of this paragraph appeared, except for the last four words thereof, in H. R. 8539 as introduced by Mr. Doughton on June 18, 1935. The last four words, "or of State law.", were added in the paragraph in H. R. 8870 as introduced by Mr. Cullen on July 16, 1935. At the Hearings before the Finance Committee Mr. Beneman, representing the United States Brewers Association, suggested the addition of a proviso exempting damage to labels incurred due to the icing of bottles by retailers (record of hearings, pp. 99–100). This suggestion was not followed by the committee. The report of the Ways and Means Committee contains the following statement:

> The labeling requirements also make it unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or held for sale after shipment therein, except as authorized by Federal law or except pursuant to regulations of the Administrator authorizing relabeling for the purpose of compliance with the labeling requirements or State law. The provision conforms to that previously enacted in the Federal Caustic Poison Act, and is believed valid under the doctrine applied in *McDermott* v. *Wisconsin* (1913) (228 U. S. 115). The provision is designed to cover two classes of cases: First, if alcoholic beverages are shipped in interstate commerce under illegal labels, the provision is intended to preserve the labels in order to prevent destruction of the evidence upon which prosecution of the violation would be based; and, second, if goods are shipped in interstate commerce under legal labels, the provision is intended to prevent the protection given the consumer by Federal law from being nullified by destruction or removal, obliteration, or mutilation of the label used in interstate commerce, or by the addition of other labels, substitution of labels, or other alteration of the labeling, prior to the article's reaching the consumer. Regulations will provide for appropriate exceptions so as to take from out of the prohibition appropriate additional labeling requirements imposed by a State pursuant to its law, and not in conflict with the Federal requirements (H. Rept. No. 1542, Federal Alcohol Control Bill, pp. 13–14).

In order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection, no bottler, or importer of distilled spirits, wine, or malt beverages, shall, after such date as the Administrator

fixes as the earliest practicable date for the application of the provisions of this subsection to any class of such persons (but not later than March 1, 1936, and only after thirty days' public notice), bottle or remove from customs custody for consumption distilled spirits, wine, or malt beverages, respectively, unless the bottler or importer, upon application to the Administrator, has obtained and has in his possession a certificate of label approval covering the distilled spirits, wine, or malt beverages, issued by the Administrator in such manner and form as he shall by regulations prescribe: *Provided,* That any such bottler shall be exempt from the requirements of this subsection if the bottler, upon application to the Administrator, shows to the satisfaction of the Administrator that the distilled spirits, wine, or malt beverages to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. Officers of internal revenue and customs are authorized and directed to withhold the release of such products from the bottling plant or customs custody unless such certificates have been obtained, or unless the application of the bottler for exemption has been granted by the Administrator. The district courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory, shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in part any final action by the Administrator upon any application under this subsection; or

NOTE.—The first two sentences in the above paragraph appeared in the same form in Mr. Doughton's bill (H. R. 8539) introduced on June 18, 1935. The date before which the Administrator must require that certificates of label approval be secured was, however, postponed by the Senate on the recommendation of the Finance Committee from January 1, 1936, to March 1, 1936 (H. R. 8870, prints dated Aug. 9 and Aug. 13).

Many clerical amendments were made in the Senate from which the Senate receded as a result of the conference. There follows a paragraph from the report of the Ways and Means Committee which relates to this portion of the Act:

> Provision is made to enforce the labeling requirements at the source by means of certificates of label approval to be issued

by the Administrator and to be enforced by internal-revenue and customs officers. This system was partially in effect under the codes and proved successful in preventing improperly labeled goods from reaching interstate channels. Adequate enforcement of the labeling provision would be impracticable without such a system. Opportunity for exemption from the requirement of obtaining these certificates is afforded industry members who demonstrate that their products are not to be shipped in interstate commerce (H. Rept. No. 1542, Federal Alcohol Control Bill, p. 13).

The last sentence of this subsection first appeared in H. R. 8870 as introduced by Mr. Cullen on July 16, 1935. Though it was not amended, Mr. Jones, counsel for the Distilled Spirits Institute, suggested the addition of a phrase authorizing the service of process on the Administrator by service on the United States attorneys (record of hearings before Senate Finance Committee on H. R. 8870, p. 88). This recommendation was not followed by the committee.

(f) Advertising: To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of distilled spirits, wine, or malt beverages, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations, to be prescribed by the Administrator, (1) as will prevent deception of the consumer with respect to the products advertised and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guaranties, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer;

NOTE.—The language of the introductory portion of this subsection and of clause (1) remained as it appeared in H. R. 8539, as introduced by Mr. Doughton on June 18, 1935, except for clerical changes, afterwards withdrawn, made in the Senate. In view of the similarity of the standards for the regulations authorized in this subsection to those set forth in subsection 5 (e) above for labeling regulations, the two subsections were usually considered together, and much of the material in the notes to subsection 5 (e), therefore, also refers and is applicable to subsection 5 (f). For information as to the purposes and scope of this subsection see, therefore, the first note to subsection 5 (e) above. In addition, the testimony of William I. Denning, representing the National Pub-

lishers' Association, before the Senate Finance Committee at its hearings on H. R. 8870, related specifically to the advertising provisions (record of hearings, pp. 136–138). The following excerpts from his testimony are worthy of note:

> The CHAIRMAN. Let me ask you, has not the Federal Trade Commission got authority now to prevent any advertisement through fraud or misrepresentation, and so on?
>
> Mr. DENNING. They have.
>
> The CHAIRMAN. How does this broaden it?
>
> Mr. DENNING. So does the Post Office Department.
>
> The CHAIRMAN. How does this broaden the power that is given to the Federal Trade Commission with reference to advertisements?
>
> Mr. DENNING. It goes still further and prescribes certain standards to be covered by regulations of the Administrator which go to what may be put in the advertisements.
>
> The CHAIRMAN. In other words, it must be first submitted to the Administrator?
>
> Mr. DENNING. I did not get your question.
>
> The CHAIRMAN. It must be first submitted to the Administrator, this advertising?
>
> Mr. DENNING. I imagine it will be, although I am not familiar with it; I am not familiar with the procedure, but I am under the impression that the advertising must be submitted to the Administrator.
>
> Senator CAPPER. I do not find any provision in this section here that says specifically that they must first submit the advertising to the Administrator.
>
> Mr. DENNING. No, sir; but I should think that an advertiser would probably feel compelled, in order to be certain that his advertising did not violate the regulations that might be fixed by the Administrator, to submit them to the Administrator.
>
> The CHAIRMAN. Was a similar provision to this written into the code under the National Recovery Administration?
>
> Mr. DENNING. I do not think so, although I think there were certain restrictions regarding advertising, but I do not think they went this far. I am not positive.
>
> Senator BARKLEY. I imagine it follows the practice of the Bureau of Chemists which administers the Pure Food Act, where general regulations may be prescribed with respect to that advertising, but I doubt seriously whether the Administrator would feel it his duty to pass individually on every advertisement that everyone wants to put in the magazine, just as the Bureau of Chemists, which does not pass on individual cases of labeling under the Pure Food Act.
>
> Mr. DENNING. That is correct, Senator.
>
> The CHAIRMAN. We would have to build up a pretty big bureau if we did have to go over and approve every advertisement.
>
> Mr. DENNING. The undoubted purposes of this act is to throw the primary responsibility on the brewer, the distiller, the rectifier, and the blender of complying with the regulations of the

Administration as to the type of advertising that should be published (id. p. 137).

(2) as will provide the consumer with adequate information as to the identity and quality of the products advertised, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are prohibited and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), and the person responsible for the advertisement;

NOTE.—The changes made in clause (2) were the same as those made in clause (2) of subsection 5 (e) and have already been considered in the note appended to that clause. Except for these changes the wording of clause (2) remained as it appeared in the bill introduced by Mr. Doughton.

(3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled;

NOTE.—The changes made in clause (3) were the same as those made in clause (3) of subsection 5 (e) and have already been considered in the note appended to the latter clause, with the exception that an amendment offered on the floor of the Senate by Senator Tydings of Maryland, and agreed to by the Senate, inserted the words "if a representation of age is made" immediately after the word "rectification." This amendment was suggested by Mr. Jones, counsel for the Distilled Spirits Institute, in the brief filed with the Finance Committee (record of hearings, p. 88). With respect to this amendment, Senator George said:

> Mr. President, the amendment has been given some consideration by other members of the committee, and it will be agreeable to take it to conference (Cong. Rec., vol. 79, no. 167, p. 13402).

The amendment was, however, almost immediately eliminated by Senator Murphy's amendment striking out the entire clause, and was not reinserted by the conferees.

(4) as will prohibit statements that are disparaging of a competitor's products or are false, misleading, obscene, or indecent;

NOTE.—This clause is identical to clause 4 of subsection 5 (e), and reference is made to the note to that clause.

(5) as will prevent statements inconsistent with any statement on the labeling of the products advertised.

NOTE.—In Mr. Doughton's bill (H. R. 8539) the following appears as clause 5:

> (5) As will prevent the use of any trade or brand name with respect to which a finding has been made by the Administrator under subsection (f) that the use of such name is unfair; and (H. R. 8539, print dated June 18, 1935, pp. 20 and 21).

It does not appear in Mr. Cullen's bill (H. R. 8870) because the subsection 5 (f) "*Unfair Name*", to which it refers, was also eliminated from the latter bill. Clause (5) of the Act appeared in the same form in Mr. Doughton's bill as clause (6) (H. R. 8539, print dated June 18, 1935, p. 21).

This subsection shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising.

NOTE.—In H. R. 8539 as introduced on June 18, 1935, this sentence read: "This subsection shall not apply to outdoor advertising in place on the date of the enactment of this act." In H. R. 8870 as introduced on July 16, 1935, the period was changed to a comma and the following phrase was added, "but shall apply upon replacement, restoration, or renovation of any such advertising."

In the debate on H. R. 8870 on the floor of the House in session as the Committee of the Whole, Congressman Buck offered as a committee amendment the elimination of the phrase "the date of the enactment of this act" and the insertion of "June 18, 1935." In offering this amendment, he said:

> Mr. Chairman, I shall explain this amendment so that the members of the committee may know the reason for it.
>
> This amendment is designed to make outdoor advertising which has been erected since June 18, 1935, conform to the provisions of the bill relating to what must be placed on such advertising and what must not be placed on such advertising.
>
> Congress has the power to make outdoor advertising no matter when erected conform to such provisions and, therefore, the requirement that advertising erected or repainted since June 18, 1935, conform to the provisions of the bill is not unreasonable, since that date is not an arbitrary date. That date is the date of the introduction of the original bill, H. R. 8539, and the industry had notice on that date of the contemplated regulation. It seemed fair to the committee to permit advertising in place

on and prior to such date to continue until replaced, restored, or renovated but that the provisions of the bill ought not to be permitted to be avoided by the erection of permanent signs between June 18 and the passage of the act.

Mr. KVALE. Mr. Chairman, will the gentleman yield?

Mr. BUCK. Yes.

Mr. KVALE. Aside from the merits of the amendment, would the gentleman join in a movement to forbid all outdoor nature-defacing advertising?

Mr. BUCK. The laws of the State that I have the honor in part to represent limits severely that type of advertising.

Mr. TRUAX. Mr. Chairman, will the gentleman yield?

Mr. BUCK. Yes.

Mr. TRUAX. The gentleman states that Congress has the power to regulate outdoor advertising. I think the gentleman is right, but why would not the Congress have the same right to regulate outdoor advertising, for instance, of the gasoline and oil companies, the Standard Oil, the Sinclair, the Texas Co.? They all furnish their dealers, who are confined exclusively to the sale of their own products, with electric signs. As I understand this bill, it will impose very drastic regulations upon the use of such signs and outdoor advertising material. Is that true?

Mr. VINSON of Kentucky. It does not restrict the use, but it prohibits a distillery or a brewery from furnishing signs and other things to induce the retailer to purchase exclusively the product of the distillery or brewery.

Mr. BUCK. If the gentleman will permit, it goes further than that. It prohibits the placing of misleading advertising on any signs that may be erected.

Mr. TRUAX. The point I wish to make is: If we enter this field as we are entering it in this bill, why not also enter the fields of similar advertising? For instance, the Coca Cola Co. That company furnishes all its dealers with prepared signs, outdoor advertising signs. Why discriminate and single out the brewers and beer dealers?

Mr. BUCK. I am afraid our committee has no jurisdiction over these other subject matters. They will have to be taken care of in some other committee, no matter how meritorious the contention of the gentleman may be.

Mr. TRUAX. I wanted to make the point that this section of the bill, in my judgment, is unfair and discriminatory in that it singles out this particular traffic and this particular commodity and will dictate to the dealers and to the wholesale brewers.

Mr. BUCK. May I suggest that the liquor industry, including the wine and brewing industry, has always been subject to Federal jurisdiction.

Mr. TRUAX. In the matter of advertising?

Mr. BUCK. In the matter of almost any sort of control that the Government wants to place upon these industries.

Mr. TRUAX. But not advertising.

Mr. BUCK. We have never placed it upon them before in this form, but the Food and Drug Act forbids false or misleading labeling or advertising.

(Here the gavel fell.)

The CHAIRMAN. The question is on agreeing to the committee amendment.

The committee amendment was agreed to (Cong. Rec., vol. 79, no. 152, p. 12267).

The prohibitions of this subsection and regulations thereunder shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, brewer, rectifier, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate.

NOTE.—William I. Denning, representing the National Publishers Association, in his testimony before the Senate Finance Committee at the hearings on H. R. 8870 stated that since the publisher does not prepare the advertisements that appear in his publication he should be expressly exempted from the requirements and penalties of this subsection (record of hearing, pp. 136–138). The sentence in the Act was suggested by Mr. Denning, adopted by the Finance Committee and agreed to by the Senate and the conferees. The following statement appears in the Finance Committee report on H. R. 8870:

> The committee amendments include a clarifying provision which makes it definite that the industry member, and not the newspaper or periodical publisher or radio broadcaster, is responsible for any advertising of liquor and wines that fails to conform to the commission's regulations requiring informative and prohibiting false advertising (S. Rept. 1215, Federal Alcohol Control Act, p. 8).

The managers on the part of the House mentioned this sentence:

> This is a clarifying amendment and makes certain that the prohibitions with regard to false advertising and the requirements as to informative advertising shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster unless such publisher or radio broadcaster is engaged in publishing the newspaper, periodical, or other publication, or in transmitting radio broadcasts, is engaged in the distilled spirits or wine industry, directly or indirectly. The House recedes with an amendment applying similar provisions in the case of malt beverages (H. Rept. 1898, Revenue From Distilled Spirits, p. 13).

The provisions of subsections (a), (b), and (c) shall not apply to any act done by an agency of a State or political subdivision thereof, or by any officer or employee of such agency.

NOTE.—This paragraph appeared in identical form in H. R. 8870 as introduced by Mr. Cullen on July 16, 1935 (H. R. 8870, print dated July 16, 1935, p. 23). It was not amended by either House. In connection with this paragraph the Ways and Means Committee's report states:

> The labeling and advertising requirements are made applicable to State agencies. While in the usual case they will not conduct transactions in the field of operation to which these provisions are confined, to the extent that they do so they are operating in a Federal field, and the labeling and advertising provisions of the bill are so necessary to safeguard the interests of consumers that it is desirable that State agencies should be subject to them. (H. Rept. no. 1542, Federal Alcohol Control Bill, p. 14). See also notes appended to the last paragraph of section 3 and to subsection 5 (d).

In the case of malt beverages, the provisions of subsections (a), (b), (c), and (d) shall apply to transactions between a retailer or trade buyer in any State and a brewer, importer, or wholesaler of malt beverages outside such State only to the extent that the law of such State imposes similar requirements with respect to similar transactions between a retailer or trade buyer in such State and a brewer, importer, or wholesaler of malt beverages in such State, as the case may be. In the case of malt beverages, the provisions of subsections (e) and (f) shall apply to the labeling of malt beverages sold or shipped or delivered for shipment or otherwise introduced into or received in any State from any place outside thereof, or the advertising of malt beverages intended to be sold or shipped or delivered for shipment or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the law of such State imposes similar requirements with respect to the labeling or advertising, as the case may be, of malt beverages not sold or shipped or delivered for shipment or otherwise intro-

duced into or received in such State from any place outside thereof.

NOTE.—This paragraph was introduced into the bill by the conferees and represents a compromise between the provisions of the bill as passed by the House, which treated brewers in the same manner as the other liquor industries except as to permits, and the Senate amendments which eliminated the brewers and malt beverages from the bill entirely. This compromise has already been discussed in the note to section 3. The statement of the managers with respect to this compromise and comments made on the floor of the House in connection therewith will be found in that note. When questioned on the floor of the House with respect to this compromise, Mr. Doughton, one of the managers on the part of the House and chairman of the Ways and Means Committee, explained it as follows:

> Mr. CELLER. Is it the purpose of the chairman of the Committee on Ways and Means to adopt some measure at the next session of the Congress which would put brewers under the same sort of regulation?
>
> Mr. DOUGHTON. That was the understanding, so far as you could have an understanding. We cannot bind the Congress. The Committee on Ways and Means cannot determine what this Congress will do at the next session, but we all felt that brewers should be under more rigid control. But we do feel this, that on the question of brewers, we got a reasonably fair compromise. The Alcohol Control Administration and those in control—my good friend Fuller to the contrary notwithstanding, who says we got nothing—say that the regulation of the breweries under the Senate amendment will be helpful, that it is not a complete surrender. Moreover, so far as beer is concerned, we put it under the same control in every State that the State law imposes at the present time. Further, 80 percent of the business is intrastate and cannot be controlled by the Federal Government at all.
>
> Mr. FULLER. Mr. Speaker, will the gentleman yield?
>
> Mr. DOUGHTON. Yes.
>
> Mr. FULLER. The gentleman does not mean to tell the House that the Alcohol Board of Control can regulate 80 percent of the beer that is sold inside the State?
>
> Mr. DOUGHTON. Oh, no; I do not; but if the State does not want control, why should the Federal Government want control? I thought the gentleman believed in State rights.
>
> Mr. FULLER. Why control distilleries when you cannot reach the breweries?
>
> Mr. DOUGHTON. That is an entirely different matter. So far as the breweries are concerned, it was testified by the head of the Alcohol Control Administration that the breweries, since the Alcohol Administration had been set up under the N. R. A., have conducted themselves in a commendable manner. I was in favor of the breweries being licensed, but we could not get that in the bill (Cong. Rec., vol. 79, no. 177, p. 14808).

The Administrator shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing regulations to carry out the provisions of this section.

NOTE.—This paragraph did not appear in H. R. 8539. At the hearings before the Ways and Means Committee it was urged that regulations be prescribed by the Administrator only after reasonable notice and an opportunity for hearing. (See brief filed by Dr. Doran, Administrator of the Distilled Spirits Institute, record of hearings before Ways and Means Committee on H. R. 8539, p. 111; brief filed by Mr. Lourie, executive secretary of the Association of Alcoholic Beverage Importers, id. p. 112; brief filed by Mr. Caskey, general counsel of the League of Distilled Spirits Rectifiers, Inc., id. p. 114; testimony of Mr. Alprin, appearing as counsel for the Wholesale Wine and Spirits Merchants Association of New York, id. p. 80; Congressman Celler, of New York, id. pp. 88 and 89.)

The paragraph in its present form appeared in H. R. 8870 as introduced by Mr. Cullen (H. R. 8870, print dated July 16, p. 24, and was not amended by either House. The sentence is paraphrased in the Ways and Means Committee report (H. Rept. No. 1542, p. 14)).

BULK SALES AND BOTTLING

SEC. 6. (a) It shall be unlawful for any person—

(1) To sell or offer to sell, contract to sell, or otherwise dispose of distilled spirits in bulk except, under regulations of the Administrator, for export or to the following, or to import distilled spirits in bulk except, under such regulations, for sale to or for use by the following: A distiller, rectifier of distilled spirits, person operating a bonded warehouse qualified under the internal-revenue laws or a class 8 bonded warehouse qualified under the customs laws, a wine maker for the fortification of wines, a proprietor of an industrial alcohol plant, or an agency of the United States or any State or political subdivision thereof.

(2) To sell or offer to sell, contract to sell, or otherwise dispose of warehouse receipts for distilled spirits in bulk, unless such warehouse receipts require that the warehouseman shall package such distilled spirits, before delivery, in bottles labeled and marked in ac-

cordance with law, or deliver such distilled spirits in bulk only to persons to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk.

(3) To bottle distilled spirits, unless the bottler is a person to whom it is lawful to sell, or otherwise dispose of distilled spirits in bulk.

(b) Any person who violates the requirements of this section shall, upon conviction thereof, be fined not more than $5,000 or imprisoned for not more than one year or both, and shall forfeit to the United States all distilled spirits with respect to which the violation occurs and the containers thereof.

(c) The term " in bulk " means in containers having a capacity in excess of one wine gallon.

NOTE.—The handling of distilled spirits in bulk brought forth the most heated and hard-fought battle in the enactment of this law. The House and the Senate took directly opposing and irreconcilable positions on this point. The House contended against the placing of restrictions on the distribution of whisky in barrels, while the Senate held that distilled spirits should only be handled in bulk by persons under the direct supervision of the Alcohol Tax Unit of the Treasury Department. Section 6 of the act was recommended by the Finance Committee in the above form to replace subsection 4 (e) of the bill (H. R. 8870), as passed by the House. This subsection provided roughly that no provision of a basic permit and no rule, regulation, or order issued under any act of Congress should prohibit the use or sale of any wooden barrel, cask, or keg as a container for distilled spirits, wine, or malt beverages unless applicable in a State in which State law prohibited the use or sale of such barrel, cask, or keg. It also provided (2) that only rectifiers or persons qualified as rectifiers, distillers, or the operators of internal revenue or customs bonded warehouses holding basic permits or industrial-alcohol plants or State agencies could package or repackage distilled spirits for sale in bottles. It further provided (3) that no person subject to occupational tax as a retailer should bottle distilled spirits for sale or qualify as a rectifier, and that no such person, except a bona fide hotel or club, should remove distilled spirits from a barrel, cask, or keg for purposes of sale. A $100 fine or imprisonment for not more than 1 year was provided as a penalty for violating clauses (2) and (3).

Clause (1) appeared in H. R. 8539 as introduced by Mr. Doughton. At the hearings before the Ways and Means Committee on this bill the provision was commented on by Mr. Choate (record of hearings before the Ways and Means Committee on H. R. 8539, p. 11), and severely criticized by Harold N. Graves, Assistant to the Secretary of the Treasury (id. pp. 30–41 and 44); Arthur Mellott, Deputy

Commissioner, Bureau of Internal Revenue (id. pp. 44–46, 48–54); George E. Eppley, a member of the Ohio State Liquor Board (id. pp. 57–58); Michael J. Flynn, representing the Labor National Committee for Modification and Repeal (id. pp. 107–109); Dr. J. M. Doran, Administrator, Distilled Spirits Institute (id. pp. 109–110); Harry L. Lourie, executive secretary, Association of Alcoholic Beverage Importers (id. p. 112); Fred A. Caskey, general counsel League of Distilled Spirits Rectifiers, Inc. (id. pp. 113–115). The subsection was commended by Frank A. Coleman, president National Wholesale Wine and Liquor Dealers' Association (id. p. 72) and by Hugh J. McMackin, secretary of the same association who filed several letters supporting the subsection (id. pp. 120–131). A. Sidney Johnston, president Associated Cooperage Industries of America (id. pp. 73–79); H. P. Somerville, chairman National Legislative Committee, American Hotel Association (id. pp. 98 and 99); and F. P. Hankerson, secretary National Legislative Committee of the Cooperage Industry (id. pp. 99–102).

Clauses (2) and (3) of the House provision on bulk sales first appeared in H. R. 8870 as introduced by Mr. Cullen on July 16, 1935 (H. R. 8870, print dated July 16, 1935, pp. 9 and 10).

The principal arguments adduced in favor of the House provision relaxing the strict limitations on bulk sales were: (1) That the cooperage industry would be greatly aided thereby; (2) that this would tend to destroy an alleged liquor monopoly operated by the large distillers and bottle manufacturers; (3) that the price of whisky would be lowered with the accompanying benefits to the consumer; (4) because of lower prices the bootlegger's inducement to violate the laws would be decreased; (5) that bootlegging continued to flourish under the bulk sales restrictions and that a different and less discriminatory method of control should be tried. In its report, the Ways and Means Committee placed the following statement with respect to its position:

> Subsection (e) of section 4 contains a provision of general application, which is designed to prevent the operation of rules and regulations promulgated under Federal law, which rules and regulations prohibit the use of barrels of wood of one or more wine gallons capacity as containers in which to transport, store, or sell, or from which to sell distilled spirits, wine, or malt beverages. This provision invalidates certain existing regulations which limit the retail sale of alcoholic beverages to sale in glass containers. The last sentence of the first paragraph of the subsection is inserted out of abundant caution so that the limitations on the power of the executive branch of the Government contained in this subsection will not be construed as giving authority to a permittee to violate State law which prohibits the sale or use of such barrels. Nor does such sentence indicate an enlargement of the scope of the powers to prescribe conditions of permits under the bill.
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> The second and third paragraphs of the subsection are designed to meet objections to permitting indiscriminate bottling: First, that there will be added likelihood of loss of revenue if a wholesaler acquiring distilled spirits in bulk in wood may not

only dispense them from such containers but also package or repackage them for resale in glass or other containers since he has authority to receive the liquor in wooden containers; and second, that the labeling and other requirements of law will readily be evaded if bottling can occur in premises at which Government officers are not stationed and which, in case of retailers, are not under a basic permit. These paragraphs prohibit such packaging or repackaging by a retailer in any case and by a wholesaler unless he qualifies as a rectifier. In such case, the wholesaler is specifically authorized to become a rectifier and then is subject to the provisions of law applicable to rectifiers. Further, while authority is given to the use of wooden barrels, etc., as containers in which to sell distilled spirits to a wholesaler, retailer, or the individual consumer, an express prohibition is contained in paragraph (3) under which no retailer except a retailer operating a bona fide hotel or club, or his agents in the course of their duties, may break such packages for sale on or off the premises. In such cases the hotel or club may remove the contents to decanters or otherwise for sale by it but all other retailers must sell the spirits barrel and all in the unbroken packages (H. Rept. no. 1542, Federal Alcohol Control Bill, p. 10).

At the hearings of the Senate Finance Committee on H. R. 8870, Mr. Choate again criticized the House provision but stated that it had been improved by the addition of clauses (2) and (3) (record of hearings before the Senate Finance Committee on H. R. 8870, pp. 5–9). Mr. Lockwood Thompson, former vice chairman of the Ohio State Liquor Board and vice chairman of the National Conference of State Liquor Administrators, appearing solely in his own behalf, also objected to the House provision (id. p. 66). E. P. Mulrooney, chairman of the New York State Liquor Authority and chairman of the National Conference of State Liquor Administrators, argued strongly against the House provision (id. pp. 76–81). The State Treasurer of Wisconsin and the legal adviser of the Maine State Liquor Commission, in letters filed in the record, also requested the elimination of this subsection (id. pp. 81 and 150, respectively). Mr. Jones, counsel for the Distilled Spirits Institute, Mr. Lourie, Mr. Caskey and Mr. Alprin again voiced the opposition of their associations to the provision (id. pp. 87–89, 102, 147–148, and 148–149, respectively). Mr. Michael Curtes, representing the National Retail Liquor Package Stores Association, argued against permitting hotels, clubs, or restaurants to secure distilled spirits in bulk (id. pp. 104–107), filing letters from several State package store associations supporting his contention. Mr. Tapee, representing the Institute of Wine and Spirit Distributors, Inc., opposed the provision and filed a brief for that organization (id. pp. 108–111).

In support of the provision Mr. Hankerson and Mr. Johnston again voiced the views of the cooperage industry and filed several supporting letters and articles (pp. 15–38). Mr. McMackin reiterated the desires of his association and supported that position with a brief, letters, articles, and a compilation of statistical data (id. pp. 38–57). Miss Louise Gross, the national chairman of the Women's Moderation

Union, spoke in favor of the House provision from the feminine consumer's point of view (id. pp. 67–71). Mr. Somerville again urged that hotels be permitted to obtain bulk distilled spirits (id. pp. 95 and 96).

The Finance Committee's report contains a brief summary of the arguments in support of its suggested amendment restricting bulk distribution:

> The House bill (sec. 4 (e)) permitted the distribution of distilled spirits in bulk, i. e., in containers having a capacity of more than one wine gallon, to wholesalers, retailers (including hotels, restaurants, clubs and saloons), and to consumers, as well as to distillers and rectifiers, provided the barrel, cask, keg, or other container was made of wood. The only exception related to bulk distribution into States whose laws prohibited bulk sales. On the other hand, while bulk sales were freely permitted, only a limited class of persons receiving bulk goods were permitted to bottle them, principally distillers, rectifiers, and certain warehousemen. Further, while bulk goods could be sold to the consumer by retailers the only retailers who could dispense bulk goods by the drink were bona fide hotels and clubs.
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> The committee recommends an amendment eliminating the House provisions and prohibiting bulk distribution. The committee is of the opinion that restriction of bulk distribution is necessary for the following reasons:
>
> First. Bulk liquor in the hands of wholesalers, retailers, and other persons whose plants are not subject to constant Treasury supervision and at whose plants Treasury inspectors are not stationed makes it likely that rectifying, blending, or bottling operations will be carried on in violation of law, and also that the bottling of liquors under improper labels and the bottling of liquors that have been tampered with in various ways not disclosed to the purchaser, will be engaged in. Control of bulk distribution and the privilege of bottling is essential if labeling requirements are to be adequately enforced, evasion of rectifiers' tax prevented, and adulteration of liquor controlled.
>
> Second. The right of wholesalers and retailers to have bulk goods on the premises facilitates the use of wholesale and retail outlets for the disposition of bootleg liquor. The refilling of bulk containers for legitimate liquor with liquor from bootleg sources is an easy matter. With the possession of bulk liquors limited principally to distillers, rectifiers, and certain warehousemen, the presence of such liquors on other premises indicates that the liquors were obtained from illegitimate sources. The Treasury Department estimates approximately $5,000,000 additional appropriation would be necessary annually for adequate policing of wholesale and retail outlets if wholesale and retail outlets were permitted to handle bulk goods.
>
> Third. Some 18 States now have legislation affirmatively prohibiting bulk sales within the State to wholesalers, retailers, or consumers. The laws of 9 States still prohibit all sale of distilled spirits, and the laws of 11 States by reason of establish-

ment of liquor monopolies or State-stores systems control bulk sales within the State. If the Federal Government is to adequately enforce the protection afforded by the twenty-first amendment with respect to these States, bulk distribution must be prohibited. Such distribution, despite local laws relating to bulk sales, makes possible the bringing of bulk goods into the State or into adjoining States and greatly facilitates the violation of the local laws.

Fourth. Bulk distribution breaks down the control over bottling established by the Treasury Department through its licensing of bottle manufacturers and the control over the use of bottles established by that Department pursuant to the Bottling Act passed at the last session of Congress.

The committee amendment prohibits all bulk distribution except to distillers, rectifiers, operators of internal-revenue bonded warehouses or customs-manipulation bonded warehouses, proprietors of industrial alcohol plants, and State agencies. It thereby prohibits the dispensing of liquor from bulk packages and, of course, eliminates necessity for consideration of the preferential treatment given to hotels and clubs by the House bill. The committee amendment retains a valuable feature of the House bill under which bottling was controlled and limits bottling to those persons named above who are entitled to receive bulk goods. The committee amendment does not discriminate between distribution in glass, wood, steel, or other containers. So far as the committee amendment is concerned containers of any material can be used for distribution both in bulk and in packages of a gallon or less. Any limitations as to the kind of materials that can be used for containers will flow not from the committee amendment, but from the provisions of the Bottling Act previously passed by Congress.

The restriction of bulk distribution was urged by the Federal Alcohol Control Administration, the Treasury Department, the National Conference of State Liquor Control Officials, various State liquor control authorities, and, with the exception of one group of wholesalers, by all the liquor trade associations appearing before the committee. Under the codes of fair competition for distillers, rectifiers, importers, and wholesalers, bulk distribution of distilled spirits was prohibited substantially in accordance with the principles set forth in the committee amendment, and these provisions, it is understood, were fully acquiesced in by the several industries as represented by their respective code authorities. Since the termination of the codes the Treasury has attempted to control certain phases of the bulk distribution and bottling problem through regulations recently promulgated. The validity of these regulations has been seriously questioned (S. Rept. No. 1215, Federal Alcohol Control Act, pp. 4, 5, and 6).

The House provision was fully discussed during the debate on H. R. 8870 on the floor of the House in session as the Committee of the Whole. (Cong. Rec., Apr. 23, 1935, vol. 79, no. 151, pp. 12179–12181, 12182–12183, 12184–12185, 12188, 12189–12190, 12198–12203,

reuse of charred barrels, Cong. Rec. July 24, 1935, vol. 79, no. 152, p. 12259–12262 bona fide hotels and clubs, 12264–12265 bulk liquor in retail stores, 12265 protecting State bulk restrictions.)

At the debate on the House bill (H. R. 8870, print dated July 25, 1935) on the floor of the Senate, Senator George postponed consideration of the bulk sales provision until the other provisions of the bill had been considered (Cong. Rec., Aug. 13, vol. 79, no. 167, p. 13397).

Senator Clark of Missouri, a member of the Finance Committee, bitterly opposed the committee's amendments with respect to bulk sales (id. 13403–13407). In answering Senator Clark and in explanation of the committee's amendments, Senator George of the committee said in part:

> The matter ought not to be settled, because it is a much larger problem, on the basis of the dispute between the bottle makers and the cooperage interests, but of course if the same public purpose can be subserved by dealing fairly in our legislation with any or all industries, we would be disposed to take that course and should take that course. The large question here is whether it can be done. I wish to call attention to the fact that, without being considered an expert, it seems to me everyone is obliged to reach the conclusion that if bulk sales shall be permitted, it will be found very easy to adulterate whisky in large quantities and to dispense such whisky after adulteration.
>
> I also wish to call attention to the fact that the Treasury officials have taken a very positive, very definite, and possibly a very justifiable position upon that question not only in this particular proposed legislation but in an act which we passed last year, known as the "Bottling Act." The Treasury officials take the position—and certainly we must accept their statement as being true—that if bulk handling of whisky by the wholesalers and by the retailers shall be permitted, the Treasury will have greatly to increase their revenue force; and it is estimated that an additional cost of $5.000.000 will be involved if the bulk sales provisions carried in the House bill shall be enacted into law.
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> * * * * *
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> The committee amendment does not prohibit all bulk distribution. It makes possible and authorizes bulk distribution to distillers, to rectifiers, to operators of internal-revenue bonded warehouses, to customs-manipulation bonded warehouses, to proprietors of industrial-alcohol plants, and to all State agencies and State stores. A large bulk distribution of whiskies is made possible under the committee amendment. What the committee amendment seeks to do is to make it more difficult to carry on successfully the bootlegging which would necessarily follow, as the Treasury Department and the Federal Alcohol Control Administration think.
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> * * * * *
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> There is, however, another very important question involved in this particular bill. It is a matter of very serious importance, and I wish to call the attention of the Senate to it.

When we repealed the eighteenth amendment, we did not stop with the mere repeal of the amendment; but we declared in the twenty-first amendment to the Constitution that—

> The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

If that is the responsibility and duty of the Congress—and it is—then it is the responsibility of the Congress equally to take every step which will legitimately protect the dry States. If we permit bulk sales of liquor in all the States adjoining a dry State, it will be entirely impossible for such State to protect itself against the steady and almost uninterrupted flow of liquor inside its borders. That has been the experience of dry States in the past, because we did not prohibit the sale of liquor in bulk until the repeal of the eighteenth amendment.

* * * * *

I now call attention to the fact that the legislatures of 18 States have affirmatively prohibited the sale of liquor in bulk.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. GEORGE. I yield to the Senator from Missouri.

Mr. CLARK. The Senator does not contend, does he, that the enactment of the provision in the House bill would in any way affect the requirements of any State which prohibited bulk sales?

Mr. GEORGE. I undoubtedly do, because that was the effect of the testimony before the committee. I am coming to that; but I wish again to call attention to the fact that 18 States have affirmatively prohibited bulk sales within their borders to wholesalers, to retailers, or to consumers. Why? Because, however we may argue about it here, those 18 States know very well that it is easier to bootleg liquor if bulk sales are permitted.

Not only have 18 States prohibited bulk sales but in 11 other States State monopolies or State stores have been authorized and established, which control the bulk sales within those States; and there are, of course, 9 States which still prohibit the sale of whisky legally in any form within their borders. So that out of the whole number of our States 29 are controlling the sale of liquor in bulk, and in 9 others no sale is legalized, whatever the form in which the liquor is distributed.

* * * * * * *

Minds may differ as to whether there will be a better opportunity to prevent bootlegging if bulk sales shall be outlawed, and reasonable men may take different positions upon that question. It seems to me the weight and force of the reasoning is in favor of the committee amendment. It is certainly the judgment of the Treasury Department, whose officials have had considerable struggle in their effort to collect the revenue, and it is certainly the judgment of the Federal Alcohol Control Administration that bulk sales directly tend to increase the distribution of bootleg liquor, and that by prohibiting and restricting bulk sales, as the Senate committee amendment does restrict and prohibit them, the problem will be much more easily handled.

It seemed to the committee that the judgment of those charged directly with the responsibility of protecting the revenue and of administering the law of the land, who have given to this subject study, and have been compelled to examine and reexamine the whole question from time to time over many, many months, could well be relied upon in considering this important feature of the bill.

It was also pointed out by some of the witnesses who appeared and who spoke from experience that there would be no very great increase in the use of barrels in any event, even if bulk sales were permitted.

They pointed out that barrels were already used and that under Treasury regulations the cooperage industry as an industry was faring about as well as it would fare if bulk sales were permitted. But that seemed to me to be more or less beside the question in the settlement of the problem upon a basis of sound public policy whether bulk sales should be permitted or restricted or prohibited.

Mr. President, I do not care to argue the question longer. It is important, and I think that there should be a full representation of the Senate when the vote is taken on the amendment. I merely wish to call attention to the fact that the committee amendment does not prohibit bulk distribution to distillers, to the rectifiers, and to the operators of internal revenue bonded warehouses or customs bonded warehouses, or proprietors of industrial-alcohol plants, or to any State agency or State monopoly, and I call attention also to the fact that the majority of the States where this question has been considered themselves decided that either the total prohibition of bulk sales or the restriction of bulk sales very much in line with the Finance Committee amendment was desirable (Cong. Rec., vol. 79, no. 167, pp. 13407 and 13408).

The debate continued in the Senate with arguments against the amendment by Senators Robinson, Lewis, and McKellar (id. 13408–13410). Senator Barkley of Kentucky spoke briefly in favor of the amendment (id. 13410–13411). The amendment finally passed by a vote of 59 to 24 (id. 13413) without specific discussion of the wording of the amendment.

The Statement of the Managers on the Part of the House summarizes the bulk sale and bottling provisions of the House bill and continues:

> Senate amendments numbered 40, 41, and 42 strike out the House provisions. Senate amendment numbered 132 makes it unlawful for any person to sell or offer to sell, contract to sell or otherwise dispose of distilled spirits in containers having a capacity in excess of 1 gallon, except under regulations of the Commission for export, or to a distiller or rectifier (including a wholesaler who qualifies as a rectifier) of distilled spirits, person operating a bonded warehouse under the internal-revenue laws or a class 8 bonded warehouse qualified under the customs laws, a wine maker for the fortification of wines, a proprietor of an industrial alcohol plant, or an agency of the

United States or any State or political subdivision thereof. The Senate amendment also makes it unlawful for any person to import distilled spirits in bulk unless he is one of the list above specified or unless for sale to or use by one of such persons. The Senate amendment further makes unlawful transactions in warehouse receipts covering spirits in bulk unless the particular receipt includes among its terms a requirement that the warehouseman shall, before delivery of the distilled spirits, pursuant to the delivery of the receipt, package them in bottles labeled and marked in accordance with law, or deliver them in bulk only to persons to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk; i. e., the persons in the list above specified. The Senate amendment further provides that it is unlawful for any person to bottle distilled spirits, or package or repackage distilled spirits in bottles, unless the bottler is a person to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk; i. e., a person in the list above specified. A criminal penalty of $5,000 or imprisonment for not more than 1 year, or both, is provided for the violation, and all distilled spirits and the containers thereof with respect to which a violation occurs are forfeited to the United States. (H. Rept. 1898, Revenue From Distilled Spirits, pp. 10, 11. Numbers refer to H. R. 8870, print dated Aug. 13, with the amendments of the Senate numbered.)

PENALTIES

SEC. 7. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory, of the District where the offense is committed or threatened or of which the offender is an inhabitant or has his principal place of business, are hereby vested with jurisdiction of any suit brought by the Attorney General in the name of the United States, to prevent and restrain violations of any of the provisions of this Act. Any person violating any of the provisions of sections 3 or 5 shall be guilty of a misdemeanor and upon conviction thereof be fined not more than $1,000 for each offense. Subject to the approval of the Attorney General, the Administrator is authorized, with respect to any violation of this Act, to compromise the liability arising with respect to such violation (1) upon payment of a sum not in excess of $500 for each offense, to be collected by the Administrator and to be paid into the Treasury as miscellaneous receipts, and (2) in case of repetitious violations and in order to avoid

multiplicity of criminal proceedings, upon agreement to a stipulation that the United States may, on its own motion upon five days' notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation.

NOTE.—This section appears in the same form as that in which it was included in H. R. 8539, as introduced by Mr. Doughton on June 18, 1935, except that the phrase "prior to the commencement of court proceedings" appeared in the third sentence immediately after the phrase "the Administrator is authorized." Only clerical changes, afterwards withdrawn, were recommended by the Finance Committee. This phrase was stricken out as the result of an amendment offered by Senator Tydings, of Maryland, while the Finance Committee's amendments and the report of the committee were being considered on the floor of the Senate (Cong. Rec., vol. 79, no. 167, p. 13403). This amendment was agreed to at the conference and was explained: "The Senate amendment provides this power of compromise can be exercised either before, pending, or after completion of court proceedings" (H. Rept. 1898, Revenue From Distilled Spirits, p. 13). The following statement with respect to this section appears in the report of the Ways and Means Committee:

> Section 6 provides a penalty not in excess of $1,000 for engaging in operations without a permit or for violating the unlawful practice provisions. Prior to the commencement of court proceedings, the Administrator is authorized, subject to the approval of the Attorney General, to compromise any such penalty upon payment of an amount not in excess of $500 for each offense. Sums so collected will be paid into the Treasury as miscellaneous receipts. In the event that repetitious violations are involved, the Administrator is given the power in order to prevent multiplicity of criminal proceedings, to require as part of the compromise a stipulation to the effect that the United States may, on its own motion upon 5 days' notice to the violator, cause a consent decree to be entered in any court of competent jurisdiction, enjoining the repetition of the violation. The administrative compromise of penalties embodies a policy similar to that incorporated in many acts of Congress relating to customs, internal revenue, air navigation, immigration, and the like. The compromise would relieve the violator from all further criminal liability for the offense and for all liability to suspension or revocation of permit or to equity proceedings. The compromise provisions would not disturb any authority the Attorney General may have to compromise cases once court proceedings have been instituted.
>
> Where the offense does not appear to be flagrant and where the violator is willing to admit his offense, it would appear to be proper to afford him an opportunity by compromise to avoid the expense of a criminal or equity proceeding and to be relieved from the penalty of suspension or revocation.

The section also provides that violations may be enjoined by district courts of the United States through appropriate proceedings in equity brought by the Attorney General in the name of the United States (H. Rept. 1542, Federal Alcohol Control Bill, pp. 14 and 15).

In his testimony before the Ways and Means Committee, Mr. Alprin, representing the Wholesale Wine and Spirits Merchants Association of New York, suggested an amendment providing for a fine or compromise for a first violation of section 5, and for a fine or compromise, and in addition the suspension of the violator's basic permit for a second violation, and for any subsequent violation the fine or compromise and the revocation of the basic permit.

Mr. Vinson asked:

Have you not got that compromise power in section 6 of this act?

Mr. ALPRIN. We have.

Mr. VINSON. Why do you want to repeat it? I refer specifically to violations of section 5.

Mr. ALPRIN. That is correct. Under the act as it is written, a violation of section 5, or any section of the act, subjects the violator to a fine of $1,000; and, in addition thereto, a suspension of his permit, or a possible suspension of his permit.

Mr. VINSON. I am not speaking about the first violation, but about the compromise part.

Mr. ALPRIN. Yes, sir.

Mr. VINSON. The compromise part is in section 6?

Mr. ALPRIN. That is correct.

Mr. VINSON. There would not be any need to repeat it here?

Mr. ALPRIN. No; you could leave it out. The purpose of this proposed amendment is that in the event a permittee misjudges innocently or does not understand the regulation entirely, it causes him, possibly, to commit a violation of the advertising or labeling regulations; for example, so that he be not subject to a fine and a suspension; that for a first violation for that cause it should be limited to a fine only.

Mr. VINSON. Being a young fellow and inexperienced?

Mr. ALPRIN. Something along those lines. (Record of hearing before the Ways and Means Committee on H. R. 8539, p. 82.)

The compromises provided for above do not apply to violations of section 8 "Interlocking directorates." (See quotation from report of Ways and Means Committee in note to that section.)

INTERLOCKING DIRECTORATES

SEC. 8. (a) Except as provided in subsection (b), it shall be unlawful for any individual to take office, after the date of the enactment of this Act, as an officer or director of any company, if his doing so would make him an officer or director of more than one company engaged in business as a distiller, rectifier, or blender of distilled

spirits, or of any such company and of a company which is an affiliate of any company engaged in business as a distiller, rectifier, or blender of distilled spirits, or of more than one company which is an affiliate of any company engaged in business as a distiller, rectifier, or blender of distilled spirits, unless, prior to taking such office, application made by such individual to the Administrator has been granted and after due showing has been made to him that service by such individual as officer or director of all the foregoing companies of which he is an officer or director together with service in the company with respect to which application is made will not substantially restrain or prevent competition in interstate or foreign commerce in distilled spirits. The Administrator shall, by order, grant or deny such application on the basis of the proof submitted to him and his finding thereon. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in part any final action by the Administrator upon any application under this subsection.

(b) An individual may, without regard to the provisions of subsection (a), take office as an officer or director of a company described in subsection (a) while holding the position of officer or director of any other such company if such companies are affiliates at the time of his taking office and if—

(1) Such companies are affiliates on the date of the enactment of this Act; or

(2) Each of such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the law of such State; or

(3) One or more such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing

business in such State, such company must be organized under the laws of such State, and the other one or more of such companies not so organized, is in existence on the date of the enactment of this Act; or

(4) One or more of such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the law of such State, and not more than one of such companies is a company which has not been so organized and which has been organized after the date of the enactment of this Act.

(c) As used in this section, the term "company" means a corporation, joint stock company, business trust, or association, but does not include any agency of a State or political subdivision thereof or any officer or employee of any such agency.

(d) Any individual taking office in violation of this section shall be punished by a fine of not exceeding $1,000.

NOTE.—This section first appeared in H. R. 8870 as introduced by Mr. Cullen on July 16, 1935. It was then numbered section seven. Except as hereafter noted and except for clerical amendments added in the Senate, most of which were later withdrawn, it remained in its original form. In H. R. 8539, as introduced by Mr. Doughton on June 18, the following subsection appeared as subsection 4 (e):

> (e) Each basic permit shall contain a condition that no officer or director of the permittee shall at any time act as an officer or director of any other corporation, joint stock company, business trust, or association which is engaged in the business of producing, importing, rectifying or blending, bottling, warehousing, or selling at wholesale or retail, distilled spirits, wine, or malt beverages. This subsection shall not apply to permittees of the class described in paragraph (1) of subsection (a) of this section until after six months after the date of the enactment of this act.

In his brief filed with the Ways and Means Committee during its hearings on H. R. 8539, Dr. Doran, Administrator of the Distilled Spirits Institute, suggested the following amendment to the above subsection:

> Section 4 (e) should be amended by adding to the fourth line thereof, after the words "or association" the words "except affiliates." Section 8, paragraph (a) (5), defines the term

"affiliate." Section 5 prohibits certain acts to be done by "any distiller * * * directly or through an affiliate." The amendment is necessary for the reason that many of our distilling corporations, large and small, who do business in more than one State, and they are all in interstate business, have found it necessary, in order to meet the requirements of State laws, to organize a separate corporation to do business in the State and are required to maintain a corporate office in the State. These subsidiary corporations, which are defined under the term "affiliate" in the bill, are wholly owned and are brought into being by reason of State laws, and in most instances are merely sales subsidiaries. They are not so-called "interlocking directorates", which the bill, as I read it, is intended to prohibit, and while the same officers may serve in each corporation nevertheless the ownership is one and the same (record of hearings, p. 109).

The report of the Ways and Means Committee says in connection with this section:

Section 7. prohibits interlocking directorates in corporations and similar forms of business organization engaged in distilling and rectifying distilled spirits and companies connected with such companies. No person who is an officer or director of one such company may serve as an officer or director of another such company without the approval of the Administrator. The section is prospective in its operation to the extent that it relates only to those officers and directors who take their offices in the second company after the date of the enactment of the act. In general it may be said that under the section existing companies having interlocking directorates may keep their present systems but may not spread their common directorates except to companies which are formed to comply with State law. Company systems formed in the future may not have interlocking directorates except in cases where the companies are formed to comply with State law and not more than one other company in the system in which the directorates are common is a company not formed to comply with State law. The exemption of companies formed to comply with State law is inserted to take care of cases in which subsidiaries of distillers, rectifiers, or affiliates thereof have been formed or may be formed to comply with the requirements of corporation laws of some States which require that as a condition of doing business therein the corporation must be organized under their law. The individual desiring to serve in the second company must first apply to the Administrator and present evidence to him that the service in both companies will not restrain competition in interstate or foreign commerce in distilled spirits. The Administrator is required to act on the application, and court review by injunction of the Administrator's action is authorized. If the individual takes office or serves without the approval of the Administrator, in those cases to which the section applies, or if his suit to restrain is not sustained, he is subject to a fine of not more than $1,000.

The provisions of section 6 authorizing compromise of penal-

ties do not apply to such fines. Compliance with section 7 is not made a condition of a basic permit (H. Rept. no. 1542, Federal Alcohol Control Bill p. 15).

At the Ways and Means Committee hearings, Mr. Choate was closely questioned by Congressman Duncan as to the existence of a monopoly or of interlocking directorates in the distilled spirits industry. (Record of above hearings, pp. 27–29.)

Congressman Cullen, the chairman of the subcommittee of the Ways and Means Committee that handled the bill, and the proponent of H. R. 8870, said in explaining the bill to the House in session as the Committee of the Whole for the debate of the bill:

> Section 7 prohibits, in certain cases, interlocking directorates in the distilled-spirits business and businesses affiliated with distilling or rectifying businesses. The section constitutes a regulation of interstate and foreign commerce to prevent restraints on such commerce. In this respect the provision is comparable to the prohibition on interlocking directorates in railroad companies contained in paragraph (12) of section 20a of the Interstate Commerce Act.
>
> The section is not retroactive in its operation. It applies only where an officer or director takes office after the date of the enactment of the act—either in pursuance of an election or appointment to the job. In the case of existing companies common directorates may be continued. But if a system of existing companies sets up a new company, no director of one of the existing companies may be a director of the new company unless the new company has been formed to comply with the law of a State under which such company must be formed under its law in order to do business in the State. But there may be common directors in any number of companies so formed to comply with State law. In the case of company systems formed in the future there can be no common directors except in one company not formed to comply with State law and one or more companies formed to comply with State law.
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> The individual seeking to serve the two companies must apply to the Administrator and prove to him that service in both companies will not substantially restrain or prevent competition in interstate or foreign commerce in distilled spirits. If the Administrator approves, service may be rendered notwithstanding the prohibitions of the section. Court review is provided for and violations of the section are made punishable criminally.
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> Mr. Duffy of New York. Will the gentleman yield?
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> Mr. Cullen. I yield to the gentleman from New York.
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> Mr. Duffy of New York. Does that mean that interlocking directorates which exist at the present time may continue to exist so long as they wish?
>
> Mr. Cullen. Interlocking directorates as in existence today, may continue, but they will not expand in the future.
>
> Mr. Duffy of New York. Is there any period of time during which they must unlock?
>
> Mr. Cullen. No. They are frozen just as they are today.

Mr. DUFFY of New York. So the bill protects them?

Mr. CULLEN. Exactly. We were very careful about that matter.

May I say there was great opposition in regard to men holding positions on the directorates of one distilling company and another, which brought out the argument that the whisky distillers held a monopoly in the country. There is one way by which we are breaking it up, insofar as it relates to new boards of directors or new individuals locking themselves in from one company to another, thereby controlling the industry.

Mr. KELLER. But if it is already done they are allowed to go ahead under this bill?

Mr. CULLEN. Yes (Cong. Rec., vol. 79, no. 151, p. 12179).

In the debate that followed, Congressman Fuller spoke at some length concerning the existence of a whisky ring or trust formed by interlocking directorates. He was questioned as follows:

Mr. KELLER. I would like to know why we should allow these interlocking directors in the whisky trust?

Mr. FULLER. Well, I cannot go into that now.

Mr. O'MALLEY. Cannot the Administrator continue to do under this bill what he has done?

Mr. FULLER. No.

Mr. O'MALLEY. Why cannot we write into the law the terms——

Mr. FULLER. Oh, we cannot do that; the Administrator has to have some discretion (Cong. Rec., vol. 79, no. 151, p. 12185).

In the debate in the Senate, Senator Clark in arguing against the Finance Committee's bulk sales amendments spoke of a whisky ring, monopoly or trust and of the interlocking directorates between distillers and bottle makers. He was questioned as follows:

Mr. MCKELLAR. Nine principal members, and that there is a bottling trust; that they have interlocking directorates and they have very unusual power and control over the distribution of liquors. Did the committee, of which the Senator from Missouri is a very prominent member, consider the question of interlocking directorates and prohibiting interlocking directorates in this bill?

Mr. CLARK. We did not. I think that would be a most excellent thing to do.

Mr. MCKELLAR. Does not the Senator think an amendment ought to be offered by which interlocking directorates between the whisky trust and the bottle trust should be eliminated and prohibited?

Mr. CLARK. I entirely agree with the Senator from Tennessee upon that point. I do not believe, however, with the regulations made in pursuance of this bill or with the Treasury regulations in existence which are to be legalized by the committee amendment, if it shall be adopted, that we could reach the situation by prohibiting membership on both boards of directors by the same men (Cong. Rec., vol. 79, no. 167, p. 13406).

The phrase "in whole or in part" which appears in the last sentence of subsection (a) of this section was inserted by a Senate

amendment suggested by the Finance Committee (H. R. 8870, prints dated Aug. 9, 1935, and Aug. 13, 1935). The suggestion made by Mr. Jones, counsel for the Distilled Spirits Institute, relating to service of process on the Administrator in appeals from final orders of the Administrator with respect to labeling also applied to final action by the Administrator under this section (see note to the final paragraph of subsec. 5 (e)).

DISPOSAL OF FORFEITED ALCOHOLIC BEVERAGES

SEC. 9. (a) All distilled spirits, wine, and malt beverages forfeited, summarily or by order of court, under any law of the United States, shall be delivered to the Secretary of the Treasury to be disposed of as hereinafter provided.

(b) The Secretary of the Treasury shall dispose of all distilled spirits, wine, and malt beverages which have been delivered to him pursuant to subsection (a)—

(1) By delivery to such Government agencies as, in his opinion, have a need for such distilled spirits, wine, or malt beverages for medicinal, scientific, or mechanical purposes; or

(2) By gift to such eleemosynary institutions as, in his opinion, have a need for such distilled spirits, wine, or malt beverages for medicinal purposes; or

(3) By destruction.

(c) No distilled spirits, wine, or malt beverages which have been seized under any law of the United States, may be disposed of in any manner whatsoever except after forfeiture and as provided in this section.

(d) The Secretary of the Treasury is authorized to make all rules and regulations necessary to carry out the provisions of this section.

NOTE.—H. R. 8539 as introduced by Mr. Doughton on June 18, 1935, and H. R. 8870 as introduced by Mr. Cullen on July 16, 1935, and referred to the Senate on July 25, 1935, after passing the House, contained no provision similar to this section. At the hearings before the Ways and Means Committee on H. R. 8539, Mr. Alprin, appearing as counsel for the Wholesale Wine and Spirits Merchants Association of New York, strongly urged that the Government be prohibited from selling seized liquor (record, pp. 82–84, 87–88). He stated that in some instances liquor had been openly illegally

imported with the intention that it be seized. The smuggler would thereafter repurchase it at the Government sale for an amount considerably less than the taxes and duties and the liquor would thus acquire a legal status and enter into competition very advantageously with goods imported through regular channels. The committee received his suggestion very favorably. Congressman McCormack, of Massachusetts, a member of the committee, stated:

> I am sorry I was not here when you said something about confiscated liquor. Do I understand you to say that it should not be sold in competition?
>
> Mr. ALPRIN. That is correct. We feel that it deprives the United States of revenue.
>
> Mr. MCCORMACK. You do not have to argue that with me. I agree with you.
>
> Mr. ALPRIN. Fine.
>
> Mr. MCCORMACK. I just wanted to get your opinion because we are hopeful that something along that line will come out very quickly; if not in this bill, then in some other bill (record, p. 84).

In this connection, Mr. Choate stated his views in the following discussion:

> Mr. WOODRUFF. Mr. Choate, what can you tell the committee regarding this alleged sale of seized liquor?
>
> Mr. CHOATE. I can only tell you that it has undoubtedly brought about a great many of the evils that Mr. Alprin has suggested. There have been large sales of somewhat doubtful merchandise, at very low prices, which have not netted the Government as much as the taxes would have, but the Government has always tried to arrive at the best solution to the problems arising from facts in its possession, and that is a problem which has undoubtedly bothered the Customs and Treasury and other seizing authorities very seriously.
>
> Mr. WOODRUFF. May I ask this further question? Is it the custom of the authorities to sell at a low price liquors known to be good?
>
> Mr. CHOATE. No; as I understand it, they analyze and sell something which does not pass the analysis as reasonably wholesome. That does not speak for its quality, or does not speak for its being what appears on the label.
>
> We, in the Federal Alcohol Control Administration, got out a separate set of labels for property sold at Government sales, applying as much of our regular labeling regulations as could conceivably be applied, stuff more or less of unknown origin, and that, to a certain extent, protected the customer to as great an extent as we could.
>
> Mr. WOODRUFF. Is there any justification for the statement of Mr. Alprin to the effect that liquors were brought in here and, as I gathered his statement, encouragement was given to seizing those liquors?
>
> Mr. CHOATE. I have no knowledge as to any particular case, but it is perfectly obvious that if the price is up and the sales

that take place and are low enough, that could be done. I do not happen to know what the recent prices have been, whether any of them have gone low enough for that purpose or whether any enterprising bootlegger has taken advantage of that curious system (record, p. 86).

Mr. Lipsett, publisher of the American Wine and Liquor Journal, suggested in his brief filed with the committee that all seized liquor be destroyed. Mr. Lourie, in his brief filed for the Association of Alcoholic Beverage Importers, suggested the incorporation into the bill of a provision forbidding Government sales of seized liquor so that the law-abiding industry members who pay liquor taxes and duties should not have to sell their goods in competition with goods sold by the Government at much lower prices (record, p. 113). Appearing as a witness before the Senate Finance Committee, Mr. Lourie reiterated his recommendation with the additional argument that much of the liquor seized and sold by the Government recently has not been genuine and that established brands of liquor have been injured by the return of such counterfeit articles to the market (record of hearings by Senate Finance Committee on H. R. 8870, pp. 103 and 104). In a letter filed with the Finance Committee, Mr. Alprin repeated his suggestion (id. pp. 148 and 149).

The Senate Finance Committee recommended the elimination of the following sentence from section 5 (e) of H. R. 8870 as passed by the House (this phrase also appeared in H. R. 8539):

> No person shall remove from Government custody after purchase at any Government sale any distilled spirits, wine, or malt beverages in bottles to be held for sale, until such bottles are packaged, marked, branded, and labeled in conformity with the requirements of this subsection.

and the insertion, in lieu thereof, of the following new section:

DISPOSAL OF FORFEITED DISTILLED SPIRITS AND WINE

> SEC. 9. Notwithstanding any provisions of existing law, distilled spirits and wine forfeited or condemned summarily or pursuant to court decree or otherwise, by or under any law of the United States, shall not be sold or otherwise disposed of publicly or privately but shall be destroyed at such time as such forfeiture or condemnation has become final; except that any such distilled spirits and wine certified by Government chemists to be of a quality equivalent to United States Pharmacopoeia quality or to be suitable for medicinal purposes shall be placed in the custody of the United States Public Health Service and disposed of by the Surgeon General of such Service, in accordance with regulations to be prescribed by him, to hospitals operated or maintained in whole or in part by the United States, for use by them for medicinal purposes only.

With respect to this amendment the report of the Finance Committee contains the following:

> The committee amendments eliminate the requirement as to the labeling of distilled spirits and wine purchased at Govern-

ment sales after seizure by the Government for violation of law. In lieu thereof it is provided (see new sec. 9) that distilled spirits and wine forfeited and condemned summarily or pursuant to court decree or otherwise, by or under any law of the United States shall not be disposed of publicly or privately, but shall be destroyed.

This provision will protect the public from the placing upon the market of seized bootleg liquor and other liquor from unknown sources. Such liquor may be of inferior quality or adulterated. Moreover, the wholesaler or retailer purchasing such liquor from the Government is, by reason of lack of information as to its origin and character (neither of which can be adequately supplied by data obtained through chemical analysis) unable properly to label or relabel the goods in conformity with law. In consequence, the consumer purchasing these goods from a wholesaler or retailer is usually in the position of buying a pig in the poke. The amendment will also prevent the present situation whereby legitimate distributors and importers who pay internal-revenue taxes and import duties have to meet competition from goods sold by the Government, frequently at prices less than the amount of tax owed to the Government. Such goods also often bear labels identical with those handled by the legitimate distributor or importer in circumstances under which the authenticity of the label and the genuineness of the goods is open to most serious doubts.

An exception is made to the destruction of the forfeited and condemned liquors whereby, if they are found to be of United States Pharmacopoeia quality or suitable for medicinal purposes, they may be distributed under the direction of the Surgeon General of the Public Health Service to Government hospitals for medicinal use only (S. Rept. No. 1215, Federal Alcohol Control Act, pp. 7 and 8).

The proposed amendments were agreed to by the Senate without discussion (Cong. Rec. vol. 79, no. 167, p. 13402). The section as it appears in the act was recommended by the conferees (H. Rept. No. 1898, Revenue From Distilled Spirits, p. 4). After summarizing the provision in the bill as it passed the House, and the Senate amendments thereto, the Statement of the Managers on the Part of the House contains the following paragraph relating to the recommended section:

> The conference agreement on amendment no. 146 inserts a provision under which distilled spirits, wine, and malt beverages forfeited summarily or by order of court are to be delivered to the Secretary of the Treasury. He is to dispose of them by delivering them to Government agencies for medicinal, scientific, or mechanical purposes, but if they have no need for them, by giving them to charitable institutions for medicinal purposes. Any articles which are not so disposed of are to be destroyed by the Secretary of the Treasury. Previous contrary authorizations are repealed and the Secretary is given power to prescribe rules and regulations to carry out the section.

The House recedes on amendment no. 104 relating to labeling after Government sale in view of the insertion of the provision prohibiting Government sales (id. p. 13; numbers refer to the numbered Senate amendments in H. R. 8870, print dated Aug. 13, 1935).

FEDERAL ALCOHOL CONTROL ADMINISTRATION

SEC. 10. The Federal Alcohol Control Administration established by Executive order under the provisions of Title I of the National Industrial Recovery Act is hereby abolished. All papers, records, and property of such Federal Alcohol Control Administration are hereby transferred to the Administrator. This section shall take effect on the date that the Administrator first appointed under this act takes office.

NOTE.—This section as it appeared in H. R. 8539 was numbered section 7 and did not include the last sentence (H. R. 8539, print dated June 18, 1935). The last sentence was included in the section in H. R. 8870 as introduced by Mr. Cullen on July 16, 1935. A clerical change was made in the Senate and the effective date of the section was changed to "when a majority of the commissioners first appointed under this Act have taken office" (H. R. 8870, print dated Aug. 13, 1935). The Senate receded from its amendments as a result of the conference. (H. Rept. 1898, Revenue From Distilled Spirits, p. 1). Mr. Choate, while testifying before the Ways and Means Committee, suggested the addition of the last sentence to the section as it first appeared.

> One small detail, but of considerable importance, is this. On page 22, lines 9 and 11, you will notice that the effect of the section is to abolish the present Federal Alcohol Control Administration on the date of the enactment of this bill, if it becomes a law. The bill, however, requires the appointment of the entire staff by an administrator, and the confirmation of the administrator by the Senate.
>
> Accordingly, there might be a lapse of a month or 6 weeks or 2 months, between the death of the present Federal Alcohol Control Administration and the birth of the new body.
>
> I would therefore recommend that, at the end of line 12, the following words be inserted:
>
> > This section shall take effect on the date that the Administrator first appointed under this act takes office.
>
> That would enable him to take over immediately the existing staff of the Federal Alcohol Control Administration, which is being held together under the N. R. A. Continuation Act, in the hope of being able to keep it intact until the new man takes it over.

Mr. FULLER. I think, Mr. Choate, the committee drawing that bill and putting that clause in there, conferred with authorities in regard to it, and it was understood that the alcoholic control is now out of existence, in a way, but that orders are being made whereby they would be taken care of, and that that agency would continue in force and effect until such time as this law went into effect.

Mr. CHOATE. I think that ought to very carefully taken care of, because the present staff is expert, it is valuable, it is worth preserving.

Mr. FULLER. That was the intention in drafting this, to take care of them.

Mr. KNUTSON. What is the language that you suggest?

Mr. CHOATE. The language was to strike out the word "hereby" in line 11, and at the end of line 12, on page 22, insert "this section shall take effect on the date that the administrator first appointed under this act takes office" (record of Ways and Means Committee hearings on H. R. 8539, pp. 25 and 26).

Later at the same hearing Mr. Choate stated that he regarded it as extremely important that the new body should have continuity with the old so that there would not be again a formative period during which the industries would suffer while the new body was finding out what it was all about:

Mr. HILL. May I ask, Mr. Choate, how would you effectuate that continuity you talk about?

Mr. CHOATE. I would do it very much as it is done in this bill, with the one suggestion that I make that if the present body be not abolished until the first administrator under the new law was actually in office, that he would then be able, under this bill as it is now drafted, to take over the staff as is, he would also, under this bill, take over all the chattels of the existing body, so that there would be complete continuity there (record of Ways and Means Committee hearings on H. R. 8539, p. 59). See note to section 2 (a) for relevant quotation from the Ways and Means Committee's report on H. R. 8870.

SEC. 11. Section 610 of the Revenue Act of 1918, as amended (U. S. C., Supp. VII, title 26, sec. 1310), is amended by adding at the end thereof the following new paragraph:

> The provisions of the internal-revenue laws applicable to natural wine shall apply in the same manner and to the same extent to citrus-fruit wines which are the product of normal alcoholic fermentation of the juice of sound ripe citrus fruit (except lemons and limes), with or without the addition of dry cane, beet, or dextrose sugar (containing, respectively, not

less than 95 per centum of actual sugar, calculated on a dry basis) for the purpose of perfecting the product according to standards, but without the addition or abstraction of other substances, except as may occur in the usual cellar treatment of clarifying or aging.

NOTE.—Sections 11, 12, 13, 14, and 15 were offered as amendments on the floor of the Senate, during debate, to H. R. 8870, as reported out by the Finance Committee (H. R. 8870, print dated Aug. 9, 1935) by Senator Fletcher, of Florida. In connection with his amendment Senator Fletcher said:

Mr. FLETCHER. Mr. President, I have submitted this amendment to the committee, and the members of the committee are familiar with it. I think the committee will make no objection to the amendment, because it is embodied in a bill which I introduced and which was referred to the Finance Committee, known as "Senate bill 2302." The bill was referred to the Treasury Department, and I have here the report of the Bureau of Internal Revenue, which says:

> With these suggested changes, insofar as the internal-revenue laws are concerned, it is recommended that S. 2302 be enacted into law.

This amendment is the same as the bill, with the changes suggested by the Internal Revenue Bureau.

Mr. HARRISON. Mr. President, I desired to ask the Senator whether he had incorporated the changes suggested by the Treasury Department.

Mr. FLETCHER. I have. I have followed their suggestion.

Mr. GEORGE. Mr. President, this amendment was submitted to the Finance Committee and, as the Senator from Florida has said, it has the approval of the Treasury Department.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Florida.

The amendment was agreed to (Cong. Rec., vol. 79, no. 167, p. 13413).

Some minor changes were made in these sections and an additional section relating to special taxes on wine makers, was deleted in conference. (H. R. 8870, print dated Aug. 13, with Senate amendments numbered, pp. 35–40). These changes are summarized in the statement of the managers on the part of the House as follows:

> The Senate amendment applies to citrus-fruit wines the provisions of internal-revenue laws applicable to "natural" grape wine. It also permits the withdrawal of citrus-fruit brandy and use of it for the fortification of citrus-fruit wine—applying in such case the same tax (20 cents a proof gallon) as in the case of grape brandy for fortification of grape wine. The amendment makes the necessary amendment to the provisions of law under which liqueurs, cordials, or similar compounds are taxed

if grape brandy is used therein so that these provisions will apply with respect to citrus-fruit wines fortified with citrus-fruit brandy. The amendment makes applicable to the fortification of citrus-fruit wines with citrus-fruit brandy the provisions of law relating to fortification of grape wines with grape brandy but limits the provision so that a citrus-fruit brandy may be used only for the fortification of a citrus-fruit wine produced from the same fruit, e. g., orange brandy may be used only for fortification of orange wine. Citrus-fruit brandy distillers and date brandy distillers may be exempted by the Secretary of the Treasury from certain provisions of law relating to the manufacture of such brandies as in the case, under present law, of distillers of apple brandy and other fruit brandy distillers.

The amendment also exempts citrus-fruit wine makers and other wine makers (in the same manner as in the case of grape wine makers) from the special tax upon wine makers if they sell wines of their own production where they are made or at the wine maker's general business office.

The amendment also makes clear that where manufacturing chemists or flavoring extract manufacturers use recovered alcohol or spirits, they may be again used only in the making of medicines or flavoring extracts of the same kind in which they are first used.

The House recedes with an amendment which makes clarifying changes and which excepts lemons and limes from the application of the Senate provision. The conference agreement also omits the provisions relating to business offices of a wine maker and to the use of recovered alcohol in flavoring extracts and medicines. (H. Rept. No. 1898, Revenue From Distilled Spirits, p. 14; see also id. pp. 4, 5, and 6 of conference report for language agreed to in conference.)

SEC. 12. Section 612 of the Revenue Act of 1918, as amended (U. S. C., Supp. VII, title 26, sec. 1301), is amended to read as follows:

> SEC. 612. That under such regulations and official supervision and upon the giving of such notices, entries, bonds, and other security as the Commissioner, with the approval of the Secretary, may prescribe, any producer of wines defined under the provisions of this title may withdraw from any fruit distillery or special bonded warehouse grape brandy, or wine spirits, for the fortification of such wines on the premises where actually made, and any producer of citrus-fruit may similarly withdraw citrus-fruit brandy for the fortification of citrus-fruit wines on

the premises where actually made: *Provided,* That there shall be levied and assessed against the producer of such wines or citrus-fruit wines a tax (in lieu of the internal-revenue tax now imposed thereon by law) of 20 cents per proof gallon of grape brandy, citrus-fruit brandy, or wine spirit whenever withdrawn and hereafter so used by him in the fortification of such wines or citrus-fruit wines during the preceding month, which assessment shall be paid by him within ten months from the date of notice thereof: *Provided further,* That nothing contained in this section shall be construed as exempting any wines, citrus-fruit wines, cordials, liqueurs, or similar compounds from the payment of any tax provided for in this title.

Any such wines or citrus-fruit wines may, under such regulations as the Secretary may prescribe, be sold or removed tax free for the manufacture of vinegar, or for the production of dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume.

The taxes imposed by this section shall not apply to dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume.

NOTE.—See note to section 11.

SEC. 13. Section 613 of the Revenue Act of 1918, as amended (U. S. C., Supp. VII, title 26, sec. 1300 (a) (2)), is amended by inserting after "grape brandy" a comma and the following: "or containing citrus-fruit wine fortified with citrus-fruit brandy."

NOTE.—See note to section 11.

SEC. 14. Section 42 of the Act entitled "An Act to reduce the revenue and equalize duties on imports, and for other purposes", approved October 1, 1890, as amended (U. S. C., Supp. VII, title 26, sec. 1302 (a)), is amended by inserting at the end thereof the following new paragraph:

The provisions of this section and section 43 shall apply to the use of citrus-fruit brandy in the preparation of fortified citrus-fruit wines in the same manner and to the same extent as such provisions apply to the use of wine spirits in the fortification of sweet wines, except that no brandy (other than a citrus-fruit brandy) may be used in the fortification of citrus-fruit wine and a citrus-fruit brandy prepared from one kind of citrus fruit may not be used for the fortification of a citrus-fruit wine prepared from another kind of citrus fruit or for the fortification of a wine prepared from any fruit other than citrus fruit.

NOTE.—See note to section 11.

SEC. 15. Section 3255 of the Revised Statutes, as amended (U. S. C., Supp. VII, title 26, sec. 1176), is amended to read as follows:

SEC. 3255. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may exempt distillers of brandy made exclusively from apples, peaches, grapes, oranges, pears, pineapples, apricots, berries, plums, pawpaws, persimmons, prunes, figs, cherries, dates, or citrus fruits (except lemons and limes) from any provision of the internal-revenue laws relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: *Provided,* That where, in the manufacture of wine or citrus-fruit wine, artificial sweetening has been used, the wine, or the fruit pomace residuum thereof, or the citrus-fruit wine may be used in the distillation of brandy or citrus-fruit brandy, as the case may be, and such use shall not prevent the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, from exempting such distiller from any provision of the internal-revenue laws relating to the manufacture of spirits, except as to the tax thereon,

when in his judgment it may seem expedient to do so: *And provided further,* That the distillers mentioned in this section may add to not less than five hundred gallons (ten barrels) of grape cheese not more than five hundred gallons of a sugar solution made from cane, beet, starch, or corn sugar, 95 per centum pure, such solution to have a saccharine strength of not to exceed 10 per centum, and may ferment the resultant mixture on a winery or distillery premises, and such fermented product shall be regarded as distilling material.

NOTE.—See note to section 11.

SEC. 16. (a) Section 1 of the Act of March 3, 1877, as amended (U. S. C., Supp. VII, Sec. 1250), is amended by striking out "not exceeding ten in numbers in any one collection-district," and by inserting at the end of such section the following new paragraph:

The Commissioner of Internal Revenue, under such regulations as he may promulgate from time to time with the approval of the Secretary of the Treasury, may, in his discretion, establish such warehouses adjacent to distilleries, and may, in his discretion, permit the removal of brandy directly from the distillery to such warehouses, and from such warehouses to the distillery warehouse of the producing distiller.

(b) Section 51 of the Act of August 27, 1894, as amended (U. S. C., Supp. VII, Sec. 1265), is amended by striking out "not exceeding ten in number in any one collection district," and by inserting at the end of such section the following new paragraph:

The Commissioner of Internal Revenue, under such regulations as he may promulgate from time to time with the approval of the Secretary of the Treasury, may, in his discretion, establish such warehouses adjacent to distilleries, and may, in his discretion, permit the removal of spirits directly from the distillery

to such warehouses, and from such warehouses to the distillery warehouse of the producing distiller.

NOTE.—At the hearings before the Senate Finance Committee on H. R. 8870, Z. L. Cobb, attorney for the Lawrence Warehouse Co., filed a brief, in letter form and attached communications from officials of the company and banks. Mr. Cobb suggested that the bill be amended to specifically permit the establishment of general and special bonded warehouses adjacent to distilleries without limitation as to number and to specifically permit the return of liquor from such warehouses to the distillery warehouse. The amendment was urged to facilitate the use of warehouse receipts from independent warehouses for use as collateral, and to thereby encourage greater credit expansion. Distillers would be able to bail their products in independent warehouses and secure negotiable warehouse receipts therefor to use as collateral. They would still be able, when the reobtained possession of the receipts, to return the liquor to their own warehouses for bottling and labeling. (Record of Senate Finance Committee hearings on H. R. 8870, pp. 59 and 60.)

This section was offered as an amendment by Senator Connally of Texas, a member of the Finance Committee, on the floor of the Senate during the debate on the bill as reported out by the committee and was agreed to by the Senate without discussion (Cong. Rec., vol. 79, no. 167, p. 13419; H. R. 8870, print dated Aug. 13 with amendments of Senate numbered, sec. 17, p. 40). As passed by the Senate the section included the following preamble:

> To prevent monopoly, and to facilitate financing through warehouse receipts issued by independently owned bonded warehouses qualified under the Internal Revenue Laws:

The preamble was omitted and several clerical changes were made in conference (H. Rept. No. 1898, Revenue From Distilled Spirits, p. 6). The Statement of the Managers on the Part of the House contains the following summary of the section:

> This amendment strikes out the limitation on the number of warehouses which the Commissioner of Internal Revenue may establish in any one collection district for the storage of fruit brandies and spirits distilled from materials other than fruit. It also provides that in the discretion of the Commissioner of Internal Revenue such warehouses may be established adjacent to distilleries, and further that he may in his discretion permit the removal of brandies and spirits, as the case may be, directly from the distillery to such warehouses, and from such warehouses to the distillery warehouse of the producing distiller. The House recedes with an amendment which omits the preamble and makes clerical changes (id. p. 14).

MISCELLANEOUS

SEC. 17. (a) As used in this Act—

NOTE.—An additional section "section 18" was offered by Senator Copeland of New York on the floor of the Senate during the debate on the bill as reported out by the Finance Committee. The amendment was passed by the Senate after the following discussion:

> Mr. GEORGE. Mr. President, I ask unanimous consent that the reading of the amendment, which is entirely technical, be dispensed with. As a matter of fact, as I understand it and as the committee understood it, the amendment simply provides for the collection of the taxes at the time of the final sale rather than the first sale or intermediate sale.
>
> Mr. COPELAND. That is correct.
>
> Mr. GEORGE. I think that is all that is sought to be accomplished by this particular amendment. There has been a hearing by a subcommittee of the Finance Committee, and the Treasury has not approved the amendment as yet because of administrative difficulties. I am quite willing to take the amendment to conference because it unquestionably would add to the revenue, in my judgment, and it would also tend to prevent bootlegging. I should be very glad to take it to conference.
>
> The VICE PRESIDENT. The question is on agreeing to the amendment.
>
> The amendment was agreed to (Cong. Rec., vol. 79, no. 167, p. 13414).

(For text of the amendment see H. R. 8870, print dated Aug. 13, 1935, pp. 41–45 and Cong. Rec., vol. 79, no. 167, p. 13414. For discussion of the amendment by Senator Copeland and of its scope, purposes and effects see Cong. Rec. Aug. 13, 1935, vol. 79, no. 167, pp. 13414–13418 and Cong. Rec. Aug. 24, 1935, vol. 79, no. 177, pp. 14950–14952.) The amendment was suggested by Eugene Greenhut, representing the National Civic Federation of New York, at the hearings before the Ways and Means Committee on H. R. 8539 (record of hearings, pp. 104–107).

The conference report recommended that the Senate recede from this amendment and summarized it as follows:

> This amendment changes the method of levying and collecting the tax on distilled spirits. Under the present law, the tax is paid by the distiller or importer. The amendment imposes the tax on the retailer and provides that it shall be collected at the time of its first retail sale. The retailer is required to affix to the bottle or other container of distilled spirits stamps denoting the quantity contained therein and evidencing payment of all internal-revenue taxes, and of all customs duties. The amendment further provides that no person shall manufacture, distill,

import, or sell at wholesale or retail any distilled spirits unless such person furnishes a bond guaranteeing the payment of all taxes and customs duties imposed thereon. The Senate recedes (H. Rept. No. 1898, Revenue From Distilled Spirits, pp. 14 and 15).

(1) The term "Administrator" means the head of the Federal Alcohol Administration.

NOTE.—This definition is in the form in which it appeared in H. R. 8539. Changes were made in the Senate which were withdrawn as a result of the conference.

(2) The term "United States" means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means Alaska, Hawaii, and Puerto Rico.

NOTE.—This definition remained in its original form until finally enacted.

(3) The term "interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

NOTE.—This definition remained in its original form until finally enacted.

(4) The term " person " means individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof; and the term " trade buyer " means any person who is a wholesaler or retailer.

NOTE.—This definition remained in its original form until enacted. It is referred to in the Ways and Means Committee's report as follows:

> Section 9 (a) (4) defines " person " to include, in addition to business organizations which that term usually includes, the officers and employees of agencies of States or political subdivisions thereof. Many States and political subdivisions have gone into various phases of the liquor business. The only provisions of the bill which relate to such agencies are those dealing with consignment sales, labeling, and advertising. As noted above

no permit is required of such agencies. The effect of the language of the definition is to treat the officers and employees of the governmental board, or whatever form the agency may take, as the ones who are subject to Federal regulation, and not the State or political subdivision itself. Wherever such agencies and officers and employees thereof are exempt from provisions of the bill, persons who hold licenses under State or local law and similar persons are not to be regarded as within the exemption and of course the State and local officials are exempt only in their official capacity (H. Rep. No. 1542, Federal Alcohol Control Bill, pp. 15 and 16).

(5) The term " affiliate " means any one of two or more persons if one of such persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of the other or others of such persons; and any one of two or more persons subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

NOTE.—This definition remained in its original form until enacted. The following comment appears in the report of the Ways and Means Committee:

The term " affiliate " is defined to include the two or more persons who are involved where one of such persons controls the other or others and all the persons involved in the case where the control of one or more companies is in a common parent. The definition includes control which is indirect as well as that which is direct (H. Rept. No. 1542, Federal Alcohol Control Bill, p. 16).

(6) The term " distilled spirits " means ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use.

NOTE.—This definition remained as it appeared in H. R. 8539 until enacted. The following comment appears in the report of the Ways and Means Committee:

The definition of distilled spirits includes the products usually considered within that definition and includes them when they are for beverage, medicinal, culinary, sacramental, or other use, but excludes such products if for industrial use. This definition has the effect of eliminating from the scope of the bill industrial alcohol production and distribution (H. Rept. No. 1542, Federal Alcohol Control Bill, p. 16).

(7) The term " wine " means (1) wine as defined in section 610 and section 617 of the Revenue Act of 1918, (U. S. C., title 26, secs. 441 and 444) as now in force or

hereafter amended, and (2) other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake; in each instance only if containing not less than 7 per centum and not more than 24 per centum of alcohol by volume, and if for non-industrial use.

NOTE.—This definition remained as it appeared in H. R. 8539. The following comment appears in the report of the Ways and Means Committee:

> The definition of wine (sec. 9 (a) (7)) incorporates by reference the definition contained in the revenue laws and includes in addition alcoholic beverages made in the manner of wine, wine made from agricultural products other than sound ripe grapes, and imitation wine. The definition applies only to the article if it contains 7 percent or more but not more than 24 percent of alcohol by volume. Wines above 24 percent of alcohol by volume are classed as distilled spirits. In all cases, as in the case of distilled spirits, the definition eliminates industrial use but includes beverage, medicinal, culinary, sacramental, and other uses (H. Rept. No. 1542, Federal Alcoholic Control Bill, p. 16).

(8) The term "malt beverage" means a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

NOTE.—This definition appeared in the same form in H. R. 8539. Although stricken out by the Senate, it was restored as a result of the conference (H. R. 8870, print dated Aug. 13, 1935, H. Rept. no. 1898, Revenue from Distilled Spirits, p. 1). The following comment on the definition appears in the Ways and Means Committee report:

> The definition of malt beverages (sec. 9 (a) (8)) is a technical one designed to cover the beverage products of the brewing industry and includes such products regardless of their alcoholic content (H. Rept. No. 1542, Federal Alcohol Control Bill, p. 16).

(9) The term "bottle" means any container, irrespective of the material from which made, for use for the sale of distilled spirits, wine, or malt beverages at retail.

NOTE.—This definition appeared in the same form in H. R. 8539. Although amended by the Senate to eliminate malt beverages, it was restored to its original form as a result of the conference (H. R. 8870, print dated Aug. 13, 1935 (H. Rept. No. 1898, Revenue From Distilled Spirits, p. 1). The following comment appears in the Ways and Means Committee report:

> The definition of "bottle" is broader than a glass container. It includes the closed container used for the sale of distilled spirits, wine, or malt beverages at retail and ignores its size and the material from which it is made, thus including jugs, cans, barrels, and all other closed containers if for use for sale of alcoholic beverages at retail (H. Rept. No. 1542, Federal Alcohol Control Bill, p. 16).

The following interpretative statement as to the meaning of the term "wholesaler" where used in the bill is found in the report of the Ways and Means Committee:

> "Wholesaler" as used in the bill, outside the taxing provisions of section 1, means a wholesaler in accordance with the usual trade understanding and not as defined in the internal-revenue laws for tax purposes (H. Rept. No. 1542, Federal Alcohol Control Bill, p. 16).

(b) The right to amend or repeal the provisions of this Act is expressly reserved.

(c) If any provision of this Act, or the application of such provision to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

NOTE.—Subsections (b) and (c) appeared in the same form in H. R. 8539 and were not changed in either House of the Congress.

APPENDICES

Appendix I.—H. R. 8870 AS REPORTED TO THE HOUSE BY THE COMMITTEE ON WAYS AND MEANS

A BILL To further protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) there shall be levied, assessed, collected, and paid annual occupational taxes at the rates provided in subsection (b) by the following persons for the privilege of carrying on any of the following businesses:

(1) Importers importing into the United States distilled spirits, wine, or malt beverages;

(2) Persons engaged in selling, or shipping for sale, in interstate or foreign commerce distilled spirits, wine, or malt beverages imported into the United States;

(3) Distillers of distilled spirits, producers of wine, and producers of malt beverages;

(4) Rectifiers and blenders of distilled spirits or wine;

(5) Persons engaged in the business of purchasing for resale at wholesale distilled spirits, wine, or malt beverages; and

(6) Any other person not included in the foregoing, who is the holder of a basic permit issued under this Act and is engaged in any business covered by such permit.

(b) Such tax shall be at the rate of $10 per annum and shall be in addition to any other occupational tax imposed on such person. In the case of any person subject to an occupational tax under any law of the United States, the tax imposed by this section shall be levied, assessed, collected, and paid in the same manner, at the same time, and subject to the same provisions of law (including penalties) as such other tax. In the case of a person who is not subject to any occupational tax under any law of the United States tax imposed by this section shall be levied, assessed, collected, and paid in the same manner, at the same time, and subject to the same provisions of law (including penalties) as the tax imposed by paragraph "First" of section 3244 of the Revised Statutes, as amended (relating to the tax on brewers).

FEDERAL ALCOHOL ADMINISTRATION

Sec. 2. (a) There is hereby created the Federal Alcohol Administration as a division in the Treasury Department.

(b) The Administration shall be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall for his services receive compensation at the rate of $10,000 per annum, together with actual and necessary traveling and subsistence expenses while engaged in the exercise of his powers and duties outside the District of Columbia. No person shall be eligible to appointment, or continue in office, as Administrator if he is engaged or financially interested in, or is an officer or director of or employed by a corporation engaged in, the production or sale or other distribution of alcoholic beverages, or the financing thereof.

(c) The Administrator shall, without regard to the civil-service laws and the Classification Act of 1923, as amended, appoint and fix the compensation and duties of such officers and employees as he deems necessary to carry out his powers and duties, but the compensation so fixed shall be subject to the approval of the Secretary of the Treasury. The Administrator is authorized to adopt an official seal, which shall be judicially noticed.

(d) The Administrator is authorized and directed to prescribe such rules and regulations as may be necessary to carry out his powers and duties. All rules and regulations prescribed by the Administrator shall be subject to the approval of the Secretary of the Treasury.

(e) Appropriations to carry out powers and duties of the Administrator shall be available for expenditure, among other purposes, for personal services and rent in the District of Columbia and elsewhere, expenses for travel and subsistence, for law books, books of reference, magazines, periodicals, and newspapers, for contract stenographic reporting services, for subscriptions for library services, for purchase of samples for analysis or use as evidence, and for holding conference of State and Federal liquor control officials.

(f) The Administrator may, with the consent of the department or agency affected, utilize the services of any department or other agency of the Government to the extent necessary to carry out his powers and duties and authorize officers and employees thereof to act as his agents.

(g) The provisions, including penalties, of sections 9 and 10 of the Federal Trade Commission Act, as now or hereafter amended, shall be applicable to the jurisdiction, powers, and duties of the Administrator, and to any person (whether or not a corporation) subject to the provisions of laws administered by the Administrator.

(h) The Administrator is authorized to require, in such manner and form as he shall prescribe, such reports as are necessary to carry out his powers and duties.

UNLAWFUL BUSINESSES WITHOUT PERMIT

SEC. 3. In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages:

(a) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported.

This subsection shall take effect sixty days after the date of the enactment of this Act.

(b) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits or wine so distilled, produced, rectified, blended, or bottled, or warehoused and bottled.

This subsection shall take effect sixty days after the date of the enactment of this Act.

(c) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of purchasing for resale at wholesale distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

This subsection shall take effect January 1, 1936.

This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under this Act.

PERMITS

SEC. 4. (a) The following persons shall, on application therefor, be entitled to a basic permit:

(1) Any person who, on May 25, 1935, held a basic permit as distiller, rectifier, wine producer, or importer issued by an agency of the Federal Government.

(2) Any other person unless the Administrator finds (A) that such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has, within five years prior to date of application, been convicted of a felony under Federal or State law; or (B) that such person is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain

such operations in conformity with Federal law; or (C) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted.

(b) If upon examination of any application for a basic permit the Administrator has reason to believe that the applicant is not entitled to such permit, he shall notify the applicant thereof and, upon request by the applicant, afford him due notice and opportunity for hearing on the application. If the Administrator, after affording such notice and opportunity for hearing, finds that the applicant is not entitled to a basic permit hereunder, he shall by order deny the application stating the findings which are the basis for his order.

(c) The Administrator shall prescribe the manner and form of all applications for basic permits (including the facts to be set forth therein) and the form of all basic permits, and shall specify in any basic permit the authority conferred by the permit and the conditions thereof in accordance with the provisions of this Act. To the extent deemed necessary by the Administrator for the efficient administration of this Act, separate applications and permits shall be required by the Administrator with respect to distilled spirits, wine, and malt beverages, and the various classes thereof, and with respect to the various classes of persons entitled to permits hereunder. The issuance of a basic permit under this Act shall not operate to deprive the United States of its remedy for any violation of law.

(d) A basic permit shall be conditioned upon compliance with the requirements of section 5 (relating to unfair competition and unlawful practices), with the twenty-first amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto.

(e) (1) No basic permit issued under this Act shall contain any condition prohibiting, nor shall any rule, regulation, or order, issued under this or any other Act of Congress, prohibit, the use or sale of any barrel, cask, or keg, if made of wood and if of one or more wine-gallons capacity, as a container in which to store, transport, or sell, or from which to sell, any distilled spirits, wine, or malt beverages. This subsection shall not apply to any condition in any basic permit issued under this Act or any rule, regulation, or order issued in connection therewith to the extent that such condition applies in a State in which the use or sale of any such barrel, cask, or keg is prohibited by the law of such State.

(2) It shall be unlawful for any person to package or repackage distilled spirits for sale or resale in bottles unless such person is a distiller, a rectifier of distilled spirits, or a person operating a bonded warehouse qualified under the internal revenue laws or a class 8 bonded warehouse qualified under the customs laws, holding a basic permit under this Act, or is a proprietor of an industrial alcohol plant or is an agency of a State or political subdivision thereof: *Provided*, That any other person may so package distilled spirits in bottles if he qualifies under the internal revenue laws as a rectifier and holds a basic permit issued under this Act for the rectification of distilled spirits.

(3) Notwithstanding the foregoing provisions of this subsection, no person who is subject to the occupational tax imposed by section 3244 " Fourth " of the Revised Statutes, as amended (U. S. C., Supp. VII, title 26, sec. 1394 (c)), on retail dealers in liquors shall package or repackage distilled spirits for sale or resale in bottles or be eligible to qualify as a rectifier of distilled spirits, and no such person, except a bona fide hotel or club, shall, for purposes of sale, remove from any such barrel, cask, or keg any distilled spirits contained therein. Any person who violates the provisions of this paragraph or paragraph (2) shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both, and shall forfeit to the United States all distilled spirits with respect to which the violation occurs, and the bottles in which packaged.

(f) A basic permit shall by order of the Administrator, after due notice and opportunity for hearing to the permittee, (1) be revoked, or suspended for such period as the Administrator deems appropriate, if the Administrator finds that the permittee has willfully violated any of the conditions thereof, provided that for a first violation of the conditions thereof the permit shall be subject to suspension only; or (2) be revoked if the Administrator finds that the permittee has not engaged in the operations authorized by the permit for a period of more than one year; or (3) be annulled if the Administrator finds that the permit was procured through fraud, or misrepresentation, or concealment of material fact. The order shall state the findings which are the basis for the order.

(g) Orders of the Administrator with respect to any denial of application, suspension, revocation, annulment, or other proceedings, shall be served (1) in person by any officer or employee of the Administration designated by the Administrator or any internal revenue or customs officer authorized by the Administrator for the purpose, or (2) by mailing the order by registered mail, addressed to the applicant or respondent at his last known address in the records of the Administrator.

(h) A basic permit shall continue in effect until suspended, revoked, or annulled as provided herein, or voluntarily surrendered; except that (1) if leased, sold or otherwise voluntarily transferred, the permit shall be automatically terminated thereupon, and (2) if transferred by operation of law or if actual or legal control of the permittee is acquired, directly or indirectly, whether by stock-ownership or in any other manner, by any person, then such permit shall be automatically terminated at the expiration of thirty days thereafter: *Provided*, That if within such thirty-day period application for a new basic permit is made by the transferee or permittee, respectively, then the outstanding basic permit shall continue in effect until such application is finally acted on by the Administrator.

(i) An appeal may be taken by the permittee or applicant for a permit from any order of the Administrator denying an application for, or suspending, revoking, or annulling, a basic permit. Such appeal shall be taken by filing, in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, within sixty days after the entry of such order, a written petition praying that the order of the

Administrator be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon the Administrator, or upon any officer designated by him for that purpose, and thereupon the Administrator shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Administrator shall be considered by the court unless such objection shall have been urged before the Administrator or unless there were reasonable grounds for failure so to do. The finding of the Administrator as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Administrator may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Administrator shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall, unless specifically ordered by the court, operate as a stay of the Administrator's order.

(j) No proceeding for the suspension or revocation of a basic permit for violation of any condition thereof relating to compliance with Federal law shall be instituted by the Administrator more than eighteen months after conviction of the violation of Federal law, or, if no conviction has been had, more than three years after the violation occurred; and no basic permit shall be suspended or revoked for a violation of any such condition thereof if the alleged violation of Federal law has been compromised by any officer of the Government authorized to compromise such violation.

UNFAIR COMPETITION AND UNLAWFUL PRACTICES

SEC. 5. It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate:

(a) Exclusive outlet: To require, by agreement or otherwise, that any retailer engaged in the sale of distilled spirits, wine, or malt beverages, purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt bev-

erages sold or offered for sale by other persons in interstate or foreign commerce, if such requirement is made in the course of interstate or foreign commerce, or if such person engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such requirement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce; or

(b) "Tied house": To induce through any of the following means, any retailer, engaged in the sale of distilled spirits, wine, or malt beverages, to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such person engages in the practice of using such means, or any of them, to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce: (1) By acquiring or holding (after the expiration of any existing license) any interest in any license with respect to the premises of the retailer; or (2) by acquiring any interest in any premises of the retailer; or (3) by furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, or other thing of value, subject to such exceptions as the Administrator shall by regulation prescribe, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest and the purposes of this subsection; or (4) by paying or crediting the retailer for any advertising, display, or distribution service; or (5) by guaranteeing any loan or the repayment of any financial obligation of the retailer; or (6) by extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions, as ascertained by the Administrator and prescribed by regulations by him; or

(c) Commercial bribery: To induce through any of the following means, any trade buyer engaged in the sale of distilled spirits, wine, or malt beverages, to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such person engages in the practice of using such means, or any of them, to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce: (1) By commercial bribery; or (2) by offering or giving any bonus, premium, or compensation to any officer, or employee, or representative of the trade buyer; or

(d) Consignment sales: To sell, offer for sale, or contract to sell to any trade buyer engaged in the sale of distilled spirits, wine, or

malt beverages, or for any such trade buyer to purchase, offer to purchase, or contract to purchase, any such products on consignment or under conditional sale or with the privilege of return or on any basis otherwise than a bona fide sale, or where any part of such transaction involves, directly or indirectly, the acquisition by such person from the trade buyer or his agreement to acquire from the trade buyer other distilled spirits, wine, or malt beverages—if such sale, purchase, offer, or contract is made in the course of interstate or foreign commerce, or if such person or trade buyer engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such sale, purchase, offer, or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce; or

(c) Labeling.—To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, with respect to packaging, marking, branding, and labeling and size and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guaranties, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer: (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by State law and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or importer of the product; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled; (4) as will prohibit statements on the label that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; and (5) as will prevent deception of the consumer by use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, and as will prevent the use of a graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been indorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organiza-

tion: *Provided*, That this clause shall not apply to the use of the name of any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, wine, or malt beverages, nor to the use by any person of a trade or brand name used by him or his predecessor in interest prior to the date of the enactment of this Act; including regulations requiring, at time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported products. No person shall remove from Government custody after purchase at any Government sale any distilled spirits, wine, or malt beverages in bottles to be held for sale, until such bottles are packaged, marked, branded, and labeled in conformity with the requirements of this subsection.

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except pursuant to regulations of the Administrator authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

In order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection, no bottler, or importer of distilled spirits, wine, or malt beverages, shall, after such date as the Administrator fixes as the earliest practicable date for the application of the provisions of this subsection to any class of such persons (but not later than January 1, 1936, and only after thirty days' public notice), bottle or remove from customs custody for consumption distilled spirits, wine, or malt beverages, respectively, unless the bottler or importer, upon application to the Administrator, has obtained and has in his possession a certificate of label approval covering the distilled spirits, wine, or malt beverages, issued by the Administrator in such manner and form as he shall by regulations prescribe: *Provided*, That any such bottler shall be exempt from the requirements of this subsection if the bottler, upon application to the Administrator, shows to the satisfaction of the Administrator that the distilled spirits, wine, or malt beverages to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. Officers of internal revenue and customs are authorized and directed to withhold the release of such products from the bottling plant or customs custody unless such certificates have been obtained, or unless the application of the bottler for exemption has been granted by the Administrator. The district courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory, shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in part, any final action by the Administrator upon any application under this subsection; or

(f) Advertising: To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical or other publication or by any sign or outdoor advertise-

ment or any other printed or graphic matter, any advertisement of distilled spirits, wine, or malt beverages, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations, to be prescribed by the Administrator, (1) as will prevent deception of the consumer with respect to the products advertised and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guaranties, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products advertised, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are prohibited and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), and the person responsible for the advertisement; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled; (4) as will prohibit statements that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; (5) as will prevent statements inconsistent with any statement on the labeling of the products advertised. This subsection shall not apply to outdoor advertising in place on the date of the enactment of this Act, but shall apply upon replacement, restoration, or renovation of any such advertising.

The provisions of subsections (a), (b), and (c) shall not apply to any act done by an agency of a State or political subdivision thereof, or by any officer or employee of such agency.

The Administrator shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing regulations to carry out the provisions of this section.

PENALTIES

SEC. 6. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States Court for any Territory, of the District where the offense is committed or threatened or of which the offender is an inhabitant or has his principal place of business, are hereby vested with jurisdiction of any suit brought by the Attorney General in the name of the United States, to prevent and restrain violations of any of the provisions of this Act. Any person violating any of the provisions of sections 3 or 5 shall be guilty of a misdemeanor and upon conviction thereof be fined not more than $1,000 for each offense. Subject to the approval of the Attorney General, the Administrator is authorized, prior to commencement of court proceedings with respect to any violation of this Act, to compromise the liability arising with respect to such violation (1) upon payment of a sum not in excess of $500 for each offense, to be collected by the Administrator and to be paid

into the Treasury as miscellaneous receipts, and (2) in case of repetitious violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation that the United States may, on its own motion upon five days' notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation.

INTERLOCKING DIRECTORATES

SEC. 7. (a) Except as provided in subsection (b), it shall be unlawful for any individual to take office, after the date of the enactment of this Act, as an officer or director of any company, if his doing so would make him an officer or director of more than one company engaged in business as a distiller, rectifier, or blender of distilled spirits, or of any such company and of a company which is an affiliate of any company engaged in business as a distiller, rectifier, or blender of distilled spirits, or of more than one company which is an affiliate of any company engaged in business as a distiller, rectifier, or blender of distilled spirits, unless, prior to taking such office, application made by such individual to the Administrator has been granted and after due showing has been made to him that service by such individual as officer or director of all the foregoing companies of which he is an officer or director together with service in the company with respect to which application is made will not substantially restrain or prevent competition in interstate or foreign commerce in distilled spirits. The Administrator shall, by order, grant or deny such application on the basis of the proof submitted to him and his finding thereon. The District Court of the United States, the Supreme Court of the District of Columbia, and the United States courts for any Territory shall have jurisdiction of suits to enjoin, annul, or suspend any final action by the Administrator upon any application under this subsection.

(b) An individual may, without regard to the provisions of subsection (a), take office as an officer or director of a company described in subsection (a) while holding the position of officer or director of any other such company if such companies are affiliates at the time of his taking office and if—

(1) Such companies are affiliates on the date of the enactment of this Act; or

(2) Each of such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the law of such State; or

(3) One or more such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the laws of such State, and the other one or more of such companies not so organized, is in existence on the date of the enactment of this Act; or

(4) One or more of such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such com-

pany must be organized under the law of such State, and not more than one of such companies is a company which has not been so organized and which has been organized after the date of the enactment of this Act.

(c) As used in this section, the term "company" means a corporation, joint stock company, business trust, or association, but does not include any agency of a State or political subdivision thereof or any officer or employee of any such agency.

(d) Any individual taking office in violation of this section shall be punished by a fine of not exceeding $1,000.

FEDERAL ALCOHOL CONTROL ADMINISTRATION

SEC. 8. The Federal Alcohol Control Administration established by Executive order under the provisions of Title I of the National Industrial Recovery Act is hereby abolished. All papers, records, and property of such Federal Alcohol Control Administration are hereby transferred to the Administrator. This section shall take effect on the date that the Administrator first appointed under this Act takes office.

MISCELLANEOUS

SEC. 9. (a) As used in this Act—

(1) The term "Administrator" means the head of the Federal Alcohol Administration.

(2) The term "United States" means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means Alaska, Hawaii, and Puerto Rico.

(3) The term "interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(4) The term "person" means individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof; and the term "trade buyer" means any person who is a wholesaler or retailer.

(5) The term "affiliate" means any one of two or more persons if one of such persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of the other or others of such persons; and any one of two or more persons subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

(6) The term "distilled spirits" means ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use.

(7) The term "wine" means (1) wine as defined in section 610 and section 617 of the Revenue Act of 1918 (U. S. C., title

26, secs. 441 and 444) as now in force or hereafter amended, and (2) other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake; in each instance only if containing not less than 7 per centum and not more than 24 per centum of alcohol by volume, and if for nonindustrial use.

(8) The term "malt beverage" means a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

(9) The term "bottle" means any container, irrespective of the material from which made, for use for the sale of distilled spirits, wine, or malt beverages at retail.

(b) The right to amend or repeal the provisions of this Act is expressly reserved.

(c) If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(d) This Act may be cited as the "Federal Alcohol Administration Act."

Appendix II.—REPORT OF THE COMMITTEE ON WAYS AND MEANS ON H. R. 8870

(Rept. No. 1542. Federal Alcohol Control Bill)

The Committee on Ways and Means, to whom was referred the bill (H. R. 8870) to further protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes, having had the same under consideration, report favorably thereon without amendment and recommend that the bill do pass.

General Statement

This bill covers the industries engaged in the distilling, brewing, blending, rectifying or other production of distilled spirits, wine, and malt beverages, or in the importing or wholesaling of such products, or in the bottling, or warehousing and bottling, of distilled spirits. The bill is designed to supplement the present Federal laws relating to such industries so as to provide for the further protection of the revenue derived therefrom, regulate interstate and foreign commerce in nonindustrial distilled spirits and wine and in malt beverages, enforce the postal laws with respect thereto, and, incidentally, enforce the twenty-first amendment.

The bill is founded on the principle that, for the protection of the public and adequate conservation of the revenue, Federal regulation is necessary. These industries are Nation-wide in their extent, profoundly affect many phases of national life, and present problems national in their scope. State regulation is inadequate, by reason of practical and constitutional limitations, to meet the problems presented. Federal regulation, in the field in which the Constitution permits the exercise of Federal authority, is necessary to deal with these problems.

National scope of the industry.—There are in the United States today 192 distilleries, qualified under the internal-revenue laws for the production of distilled spirits, other than brandy, for beverage use. In addition, there are 169 distilleries authorized to engage in the production of brandy only, and 55 persons authorized as lessees to operate distilleries owned by others. During the calendar year 1934 the operating distilleries produced, for beverage use, about 17 million gallons of alcohol, 5 million gallons of gin, 1½ million gallons of rum, and 108 million gallons of whisky, using in such production, among other materials, approximately 20 million bushels of grain. All the lawfully established distilleries of the United States, including those actively in operation and those completed and ready

for operation, possess a potential productive capacity well in excess of the above figures.

There are 415 active rectifiers of distilled spirits in the United States engaged in the rectification and bottling of such spirits for public consumption. During the year 1934 the total output of these rectifying plants was approximately 24 million gallons.

Six hundred and twenty concerns are actively engaged in the importation of alcoholic beverages. During the calendar year 1934 these concerns brought into the United States a total of approximately 11 million gallons of alcoholic beverages, valued at some 48 million dollars.

At the present time 680 breweries are in operation in the United States. During 1934 these breweries produced approximately 43 million barrels of fermented malt beverages, 40 million barrels of which were actually marketed for sale to the public. Beer produced during 1934 required the use by brewers of approximately 1½ billion pounds of malt, hops, corn, and similar brewing materials.

Approximately 500,000 people are employed directly by the producers and wholesalers of alcoholic beverages and by the 200,000 retail outlets scattered throughout the country. This figure does not include those indirectly employed in the production of barrels, glass, labels, and other materials and accessories used in the production and distribution of alcoholic beverages. During 1934 the American public expended the sum of approximately 2 billion dollars in the purchase of tax-paid liquors, including over 40 million gallons of hard liquors, 35 million barrels of beer, and 21 million gallons of wine. It is estimated that the advertising expenditures alone for the alcoholic beverage industries during the current year will exceed the sum of 20 million dollars, more than half of which will go toward the purchase of newspaper and periodical advertising.

It is estimated that during the calendar year 1934 Federal internal-revenue receipts, exclusive of income taxes, derived from the alcoholic beverage industries, totaled approximately $375,000,000; State license fees and excise taxes totaled approximately $116,000,000; and net profits derived from alcoholic beverages by the monopoly States totaled $34,000,000.

The figures set forth above indicate both the size of the liquor business and the national scope of its operation.

Inadequacy of existing law.—Experience prior to prohibition demonstrated that the individual States, by reason of the diversity of their laws and the fact that practically all alcoholic beverage producers and large-scale distributors did an interstate business, could not alone provide those safeguards necessary for the protection of the revenue of the United States, prevent the use of the facilities of interstate and foreign commerce and the mails to carry on unlawful and deceptive practices, and protect their own citizens from the evils which are always present in an inadequately regulated liquor traffic. That situation holds true today. Further, during prohibition, unscrupulous persons entered into the liquor business with the consequences known to all. The bootlegger and the racketeer have not yet disappeared from our national life. Under existing Federal law there is no means of keeping the criminal from entering the legalized liquor field. The executive branch of the Government (except to a

limited extent in the case of distilleries) is powerless to prevent the most notorious criminal from entering into the business of production or distribution of alcoholic beverages. The revenue cannot be adequately protected, the "tied-house" control cannot be curbed, the public cannot be protected from unscrupulous advertising, the consumer cannot be protected from deceptive labeling practices; in short, the legalized liquor traffic cannot be effectively regulated, if the door is left open for highly financed gangs of criminals and racketeers to enter into the business of liquor production and distribution.

Even if the present Federal law were adequate to prevent the criminal from entering the liquor field, there would still remain the problem of control of the unethical minority in the business, the activities of which are beyond State power and require regulation in the public interest. The internal revenue, Federal trade, and food and drug laws are insufficient for this purpose. Protection of the consumer and the elimination of improper practices in this industry are imperative, and additional legislation to accomplish these purposes is necessary.

The former code system.—The codes of fair competition for the liquor industry under the National Industrial Recovery Act represented efforts to meet many of the evils outlined above and to accomplish many of the purposes of this bill. The adoption of the twenty-first amendment took place with unexpected speed. When repeal became effective on December 5, 1933, Congress was not in session, nor was there legislation on the books adequate to control the alcoholic beverage industries. Codes of fair competition under the National Industrial Recovery Act were availed of to meet the situation until Congress had had an opportunity to legislate. This view as to the temporary character of the codes appears in their preamble. It was expected that Congress would, at the next session, enact appropriate legislation. Nevertheless the code system continued in effect, without the enactment of legislation by Congress, from December 1933, until May 27 last, when the Supreme Court handed down its decision in the case of *Schechter Poultry Corporation* v. *United States.* As a result of that decision, the codes are no longer being enforced, and since that date the several alcoholic beverage industries have been without Federal supervision, except such as is incident to the collection of the revenues.

Under the code system a voluntary code for the brewing industry (already in existence at the time of repeal as a result of 3.2 beer legislation of Mar. 22, 1933) was approved by the President. At the same time, the President imposed codes upon the other alcoholic beverage industries, namely, the distillers, rectifiers, importers, wholesalers, and wine producers. By Executive order under the National Industrial Recovery Act the President established the Federal Alcohol Control Administration to administer these codes and certain related functions. The bill embodies in statutory form so much of the former code system as the committee now deems appropriate and within the constitutional power of Congress to enact. In general, it may be said that the bill incorporates the greater part of the system of Federal control which was enforced by the Government under the codes.

The outstanding exceptions are that all provisions relating to open-price competition, including posting of prices and prohibition of guarantees against decline in price and of refunds, rebates, and concessions, have been omitted, together with the system of code authorities, divisional committees, and regional boards to aid in administering the codes. Also control under the codes of bulk distribution of distilled spirits to wholesalers, retailers, and consumers is omitted.

The proposed legislation, by providing a Federal agency to supervise the aspects of the liquor industry within the range of Federal power, a permit system under which that supervision can be effective, and methods to restrict unlawful and unfair practices in the liquor business, will, it is believed, do much to protect the revenue and to prevent the recurrence of those evils known to be present in the liquor traffic in the past and which no fair-minded citizen wishes to be restored and maintained.

Hearings.—Hearings were held by the committee on June 19 and 20, 1935, on H. R. 8539, which formed a basis for the bill now being reported. (See hearings entitled "Federal Alcohol Control Act", 74th Cong., 1st sess.) Hearings upon other phases of the necessity for Federal control of the alcoholic beverage industries, including the extension of the code system under which such industries formerly operated, were held by the committee on May 22, 1935 (see hearings entitled "Extension of National Industrial Recovery Act", 74th Cong., 1st sess.) and by the Senate Committee on Finance on April 17, 1935. (See hearings entitled "Investigation of the National Recovery Administration", 74th Cong., 1st sess., pt. 6.) Hearings on various other phases of the liquor problem were held by the Committee on Ways and Means in conjunction with its consideration of H. R. 8001. (See hearings entitled "Administration of Liquor Taxing Laws", 74th Cong., 1st sess.)

Analysis and Explanation of the Bill

TAXES

Section 1 levies an occupational tax on the carrying on of various phases of the liquor business. The taxes provided are at the rate of $10 per annum and are imposed on importers, sellers in interstate or foreign commerce of liquor, distillers, wine producers, brewers, rectifiers, wholesalers, and other holders of permits provided for in the bill. The provisions of law relating to the levy, collection, and payment of existing occupational taxes by persons engaged in the occupations to which the additional tax applies are made to apply to the taxes imposed by the section.

FEDERAL ALCOHOL ADMINISTRATION

Section 2 establishes a Federal Alcohol Administration which is to be a division in the Treasury Department. The name of the organization is fixed so as to avoid confusion with the Federal Alcohol Control Administration created under the authority of the

National Industrial Recovery Act. The latter organization is abolished under section 8 of the bill, and its papers, records, and property are transferred to the new agency. The abolition and transfer are postponed, however, until the Administrator who is to head the new organization takes office.

Section 2 (b) provides for the appointment of an Administrator by and with the advice and consent of the Senate, whose compensation is to be $10,000 per annum. No person connected with the liquor industry or its financing is to be eligible to appointment or to service as Administrator.

Under section 2 (c), the Administrator is given the power to appoint and fix the compensation and duties of his officers and employees. Such appointments and compensation are to be made and fixed without regard to the civil-service laws or the Classification Act. The compensation of each of the officers and employees so appointed, however, is required to be approved by the Secretary of the Treasury. This subsection also authorizes the Administrator to adopt an official seal which is to be judicially noticed.

Section 2 (d) gives the Administrator power to prescribe rules and regulations. All such rules and regulations (including those prescribed in the exercise of powers under section 5 which relates to unfair competition and unlawful practices) must have the approval of the Secretary of the Treasury.

The usual objects of expenditure of appropriations are authorized by subsection (e) of section 2, but provision is specifically made by which the Administrator may acquire magazines, periodicals, and newspapers so that he may effectively carry out his powers relating to advertising contained in section 5, and specific provision is made under which expenditure may be made for the purchase of samples for analysis and use as evidence. Subsection (f) authorizes the Administrator to use the services of other agencies of the Government with their consent. Subsection (g) applies the procedural provisions of law relating to Federal Trade Commission investigations to the exercise of the Administrator's powers. Subsection (h) authorizes the Administrator to require reports necessary to carry out his powers and duties.

PERMITS

A permit or license system has been a customary method of administering and enforcing liquor laws. At the present time by act of Congress distillers of alcohol for industrial purposes and brewers of beer of an alcoholic content of 3.2 by weight or less operate under Federal permits. The permit system was used under the codes.

Enforcement of liquor laws is an exceptionally difficult enforcement problem. Many factors not common to other industries exist in the liquor industry and present enforcement difficulties not commonly met with in the enforcement of other laws. The racketeering element present in the industry during prohibition is not wholly eliminated. Internal revenue taxes and customs duties afford an economic inducement to operate outside of both liquor tax and liquor control laws. The industry has been newly reestablished and is unstable in its personnel and practices. This, together with the

tradition of past practices, particularly corruption and interference in politics and efforts to stimulate consumption through the "tied house" and control of retail channels, afford a poor groundwork for reliance on law observance through voluntary action or through the customary methods of enforcement. The history of the enforcement of liquor laws in this country has been characterized by widespread violations and evasions. The ease with which the products of the industry are adulterated, sophisticated, and misbranded; their relatively high value; the perishable character of many wines and malt beverages; the large distribution costs—all are extraordinary incentives to ignore requirements of law. The mobility of products of the industry makes all channels of interstate and foreign commerce readily available for illegal transactions. Relatively drastic enforcement methods, such as the permit system, therefore become necessary.

Scope of permit system.—The bill (sec. 3) requires permits for all distillers; wine producers; rectifiers or blenders of distilled spirits or wine; bottlers or warehousemen and bottlers of distilled spirits; importers of distilled spirits, wine, or malt beverages; and wholesalers of distilled spirits, wine, or malt beverages. The permit does not authorize the industry member to engage in operations which are prohibited by State laws. No permits are provided for brewers or retailers. No permit is required for any State liquor control monopoly, board, or similar agency, or the members thereof.

A distiller, blender, or rectifier, or other producer of distilled spirits or wine, or an importer of distilled spirits, wine, or malt beverages, or a wholesaler of such products, would, under his permit as such, be in addition authorized, either directly or indirectly or through an affiliate, to sell or otherwise dispose of in interstate or foreign commerce, at wholesale or retail, goods produced by him, imported by him, or purchased by him, respectively. No permit authority is required for sale or other disposition in intrastate commerce or for warehousing, except in connection with bottling of distilled spirits.

The permit would also include authority to the producer, importer, or wholesaler to bottle, with or without reduction in proof, either directly or indirectly, or through an affiliate, bulk goods produced, imported, or purchased, respectively, by the permittee; subject to the limitations of section 4 (e) (2) which restricts the privilege of bottling in case of distilled spirits. Puerto Rico is not included in the restriction inasmuch as the internal-revenue laws do not apply within Puerto Rico. In accordance with these restrictions, a distiller could, under his permit, bottle in a distillery bonded warehouse all distilled spirits of his own production, and if his warehouse is designated as a concentration warehouse or if he operates an alcohol bonded warehouse, he may also bottle distilled spirits produced by others either on his own account or for hire. Such bottling operations may be undertaken on the tax-paid premises in connection with any such warehouse, and the permittee may sell or otherwise dispose of at wholesale or retail in interstate or foreign commerce the distilled spirits so bottled. A blender or rectifier of distilled spirits could under his permit bottle on his rectifier's premises distilled spirits

blended or rectified by him or acquired by him from any other person, whether for his own account or for hire, and sell or otherwise dispose of at wholesale or retail in interstate or foreign commerce the distilled spirits so bottled.

A warehouseman, who is not a distiller or rectifier, could under his permit bottle distilled spirits acquired by him from any other person, whether for his own account or for hire, if the warehouseman is operating a general or special or alcohol bonded warehouse qualified under the internal revenue laws or a class 8 bonded warehouse qualified under the customs laws, and if the bottling operations occur on the bonded premises of such warehouse or the tax-paid premises in connection therewith; and could under his permit sell or otherwise dispose of at wholesale or retail in interstate or foreign commerce the distilled spirits so bottled. An importer or wholesaler would have no privilege of bottling distilled spirits for sale or resale unless he qualified as a rectifier under the internal revenue laws.

The permit provisions apply to all members of the specified industries, irrespective of whether the permittee's operations are intrastate or interstate in character. Apart from the more effective enforcement of revenue and postal laws, which apply as well to intrastate as to interstate operations, laws relating to the enforcement of the twenty-first amendment and to interstate commerce require that the permit system extend to all intrastate operations in order that the permit system may be an effective means of preventing evasion of these laws. The intricacies of corporate set-ups, the establishment of branch houses and sales corporations, the use of rectifiers, blenders, and wholesalers as interstate distribution conduits, and the disposal of stocks through sale of warehouse receipts, make it necessary that all industry members of the specified industries operate under permits, irrespective of the character of their operations at any time, if the permit system is to prove adequate in more effectively enforcing the revenue and postal laws and laws relating to interstate commerce and the twenty-first amendment.

Conditions of permit.—The only conditions which attach to a validly issued permit (other than revocation because of nonuse for more than 1 year or termination in the event of transfer) are: (1) Compliance with the provisions of the bill relating to unlawful practices involving interstate or foreign commerce and in some instances involving enforcement of the postal laws, (2) compliance with the twenty-first amendment and laws relating to the enforcement thereof (which would include the provisions of H. R. 8368, if enacted), and (3) compliance with all other Federal laws now in force or hereafter enacted relating to distilled spirits, wine and malt beverages, including taxing laws, postal laws, and such interstate commerce laws as the Reed amendment (sec. 4 (d)). The permittee is thus left free under the bill to conduct his business as he sees fit, subject only to compliance with Federal laws of unquestionable validity. It follows, therefore, that the permit provisions constitute an exercise by Congress of its power to use such means as are "necessary and proper" in order more effectively to carry out its powers to collect taxes, regulate interstate and foreign commerce, enforce the twenty-first amendment, and administer the postal laws, as exercised in the

provisions of the present bill relating to unlawful practices and enforcement of the twenty-first amendment, in laws hereafter enacted to enforce the twenty-first amendment, and in the provisions of existing law.

Qualifications for permit.—All persons who held a basic permit issued under the code system and in full force and effect at the time of the termination of that system as a result of the decision in the *Schechter case*, are, under the bill, entitled as a matter of right to permits issued under the new law when enacted, except in the case of wholesalers (sec. 4 (a) (1)). Wholesalers held only temporary basic permits at the time of the termination of the code system. The temporary basic permits were issued without the usual investigation. The other permittees under the code system were issued permits after they demonstrated that they did not have records as law violators and that by reason of their previous experience, financial standing, and trade connections they were potential legal members of the industry.

Under the bill, wholesalers and new applicants are entitled to permits, unless the Administrator after notice and hearing makes certain specific findings (sec. 4 (a) (2)). Thus, in order to deny an application, the Administrator must find that the applicant, within 5 years prior to his application, has been convicted of a felony under Federal or State law, or that the applicant is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law, or that the operations proposed to be conducted under the permit are in violation of the laws of the State in which they are to take place.

These requirements are designed to exclude from the industries persons who would be likely to violate the provisions of the bill and other Federal or State laws. Such requirements are, in the judgment of the committee, fair and reasonable. and bear a real and substantial relation to the adequate enforcement of provisions of Federal law heretofore enacted or enacted in the accompanying bill.

Suspension and revocation.—A permit is subject to revocation or suspension for willful violation of its conditions or to revocation for nonuse, or to annulment if obtained through fraud, misrepresentation, or concealment of material fact (sec. 4 (f)). For a first offense, involving a violation of the conditions of a permit, the Administrator may not revoke, but only suspend, the permit. The requirements as to issuance and as to revocation. suspension, or annulment of a permit provide definite standards to be applied by the Administrator. The Administrator's determination must be embodied in findings made after due notice and opportunity for hearing. The bill fulfills all legal requirements as to both standards and findings.

Personal service of orders of the administrator as well as service by registered mail of such orders is provided for in subsection (g).

Provision is made in connection with the Administrator's power to deny a permit or to revoke. suspend. or annul a permit that his action be by formal order stating therein the finding upon which the order is based (sec. 4 (b) and sec. 4 (f)). This requirement is inserted in order that the applicant or permittee may be informed of the

substance of the reasons for the Administrator's action (though this provision does not have the effect of invalidating the order if the reasons stated are inadequate but the record discloses adequate reasons). The specification that the action of the Administrator, even in case of denial of an application for a permit, be by order permits the reviewing court to have something before it to review so that jurisdiction will not be denied on the ground that the action of the Administrator is negative.

A permit may not be revoked or suspended on the ground of violation by the permittee of Federal law more than 18 months after the conviction for the offense nor more than 3 years after violation if no conviction has theretofore been had. Nor may a permit be revoked or suspended at any time for a violation of Federal law if the violation has been compromised by a Federal officer authorized to compromise such violation (sec. 4 (j)).

Court review.—Court review of the Administrator's order is provided in section 4 (i). This provision is inserted in order to comply with the constitutional requirement that a man's right to do business may not be denied administratively, even in pursuance of a Federal power, without his having his day in court. The provision of the bill is similar to that contained in the Packers and Stockyards Act, the Communications Act, the Securities Act, and the Securities Exchange Act as well as the provision in the internal revenue laws under which appeals are taken from the Board of Tax Appeals. Review is granted in the United States Court of Appeals for the District of Columbia or the Circuit Court of Appeals of the United States where the person resides or has his principal place of business, at his election. Review in the circuit court is thought to be more desirable than review in the district court in order that there may not be the delay and expense consequent upon a lawsuit in the district court and appeal from that court's action to the circuit court of appeals. Further, review of the order is in substance an appellate function which is not within the usual scope of district court jurisdiction but rather within that of the circuit court of appeals. Review is limited to questions of law as required by the Constitution in the case of a constitutional court in accordance with the principles laid down in *Old Colony Trust Co.* v. *Commissioner of Internal Revenue* (1929) (279 U. S. 716); *Federal Radio Commission* v. *General Electric Co.* (1930) (281 U. S. 464); and *Federal Radio Commission* v. *Nelson Brothers Bond & Mortgage Co.* (1933) (289 U. S. 266). Provision is made, however, by which additional evidence may be adduced before the Administrator even after the case is in court. Appeal from the decision of the court of appeals may be had by certification or certiorari to the Supreme Court of the United States. The court proceedings are to operate as a stay of the order of the Administrator unless the court otherwise directs.

Transfers of permits.—The bill prohibits the lease, sale, or other voluntary transfer of any permit (sec. 4 (h)). This prohibition does not, however, prohibit the sale or other transfer of the assets of a permittee. A distiller, for instance, may sell his distillery but not his permit. The purchaser in such case is required to obtain a new permit. In order to provide continuity of operation of the business, in case of a sale, it lies within the power of the parties to condition

the transfer of title upon the prospective purchaser's obtaining a new permit. For the purpose of caring for situations that arise through transfers by operation of law or through acquisition, for instance, of control of an existing permittee by acquisition of its stock, provision is made for the continuance of the old permit, but only for a limited time, pending application for a new permit and action by the Administrator thereon. This, the committee believes, is necessary in order to prevent the permits from falling into the hands of bootleggers and other law violators who would not have been entitled to a permit in the first instance.

Bulk sales.—Subsection (e) of section 4 contains a provision of general application, which is designed to prevent the operation of rules and regulations promulgated under Federal law, which rules and regulations prohibit the use of barrels of wood of one or more wine gallons capacity as containers in which to transport, store, or sell, or from which to sell distilled spirits, wine, or malt beverages. This provision invalidates certain existing regulations which limit the retail sale of alcoholic beverages to sale in glass containers. The last sentence of the first paragraph of the subsection is inserted out of abundant caution so that the limitations on the power of the executive branch of the Government contained in this subsection will not be construed as giving authority to a permittee to violate State law which prohibits the sale or use of such barrels. Nor does such sentence indicate an enlargement of the scope of the powers to prescribe conditions of permits under the bill.

The second and third paragraphs of the subsection are designed to meet objections to permitting indiscriminate bottling: First, that there will be added likelihood of loss of revenue if a wholesaler acquiring distilled spirits in bulk in wood may not only dispense them from such containers but also package or repackage them for resale in glass or other containers since he has authority to receive the liquor in wooden containers; and second, that the labeling and other requirements of law will readily be evaded if bottling can occur in premises at which Government officers are not stationed and which, in case of retailers, are not under a basic permit. These paragraphs prohibit such packaging or repackaging by a retailer in any case and by a wholesaler unless he qualifies as a rectifier. In such case, the wholesaler is specifically authorized to become a rectifier and then is subject to the provisions of law applicable to rectifiers. Further, while authority is given to the use of wooden barrels, etc., as containers in which to sell distilled spirits as a wholesaler, retailer, or the individual consumer, an express prohibition is contained in paragraph (3) under which no retailer except a retailer operating a bona fide hotel or club, or his agents in the course of their duties, may break such packages for sale on or off the premises. In such cases the hotel or club may remove the contents to decanters or otherwise for sale by it, but all other retailers must sell the spirits barrel and all in the unbroken packages.

UNFAIR COMPETITION AND UNLAWFUL PRACTICES

Section 5 of the bill enumerates six specifically defined unlawful practices. The prohibition of these practices is based primarily on

the commerce clause and in some instances on the twenty-first amendment and the postal power. The section applies to distillers, rectifiers, blenders, and other producers of distilled spirits, wine, or malt beverages, importers and wholesalers of distilled spirits, wine, or malt beverages, and bottlers and warehousemen and bottlers of distilled spirits. The provisions are applicable to the persons engaged in such businesses whether the unlawful practices are engaged in directly by them or engaged in indirectly or through an affiliate as defined in the bill. These prohibited practices fall in two general categories, those relating to monopolistic control of retail outlets and those relating to labeling and advertising.

"*Tied-house*" *provisions.*—Section 5 (b) prohibits a number of specific practices under the heading "tied-house", such as holding any interest in any retail license or the acquiring of any interest in the premises of a retailer; the furnishing, giving, renting, lending, or selling to a retailer of equipment, fixtures, signs, supplies, money, or other thing of value, except as permitted under regulations; paying or crediting a retailer for advertising, display or distribution services; guaranteeing of any loan or repayment of any financial obligation of a retailer; and extending to a retailer of credit in excess of that usual and customary in the industry for the particular class of transactions.

Three other types of practices which are closely related to, and have constituted additional means of effecting, the "tied-house" are also prohibited. These practices are exclusive purchase arrangements with retailers (sec. 5 (a)); commercial bribery of a trade buyer, or the offering or giving of any bonus, premium, or compensation to the officers or employees of a trade buyer (sec. 5 (c)); and deliveries to a trade buyer on consignment, or conditional sales, or sales with the privilege of return, or sales on any basis other than a bona-fide sale (sec. 5 (d)).

In connection with the prohibition on consignment sales (sec. 5 (d)) it is to be noted that the provision relates to the buyer as well as the seller. The other provisions discussed above relate only to conduct by the seller. It has been brought to the attention of the committee that certain large buyers are in such a strategic position with respect to sellers that they often have sufficient economic power to compel the sellers to deal with them on a consignment or return basis. Buyers less powerful are unable to exact such terms from the seller. Such situations are in practical effect not essentially different from the exaction of price discriminations in favor of the large trade buyer. Accordingly the committee felt that the trade buyer ought to be included within the consignment-sale prohibition. The provision is broad enough to include not only the case where the seller agrees in a single transaction to take back undesirable goods in consideration for the sale of other goods, but also cases in which, in form, separate transactions have occurred but which are in substance one transaction. The consignment sale provision is made to apply to sales and purchases by State agencies. The constitutionality of applying such regulation to State agencies is sustained by the cases of *South Carolina* v. *U. S.* (1905) (199 U. S. 437); *Ohio* v. *Helvering* (1934) (292 U. S. 360); and *Helvering* v. *Powers* (1934) (293 U. S. 214).

The foregoing practices have in this industry constituted the principal abuses whereby interstate and foreign commerce have been restrained and monopolistic control has been accomplished or attempted. The most effective means of preventing monopolies and restraints of trade in this industry is by prohibiting such practices, thereby striking at the causes for restraints of trade and monopolistic conditions and dealing with such conditions in their incipiency.

Furthermore, such abuses were so prevalent before prohibition that they were regarded in a large measure as responsible for the evils which led to prohibition. (See Report of the National Commission on Law Observance and Enforcement (1931), H. Doc. No. 722, 71st Cong., 1st sess., p. 6; and Fosdick and Scott, Toward Liquor Control (1933), pp. 42–43.) The prohibition of these practices will, accordingly, not only prevent monopoly and restraint of interstate trade but will also tend to eliminate or mitigate certain incidental social evils, such as those which have necessarily followed the forced increase in alcoholic-beverage sales resulting from the "tied-house." The majority of the industry members have come to accept the view that it is unfair for any of their number to resort to practices which result in such social evils, since other members of the industry are thereupon compelled likewise to engage in such practices if they are to retain their business, and as a result the entire industry is brought into disrepute.

It should be noted in each instance that the unfair practices above referred to are prohibited only under those circumstances where they occur in the course of interstate or foreign commerce, or are engaged in to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce, or where the direct effect of the practices is to prevent, deter, hinder, or restrict other persons from selling or offering for sale their products in interstate or foreign commerce. The practices here involved are analogous to those prohibited by the antitrust laws.

Labeling and advertising provisions.—The labeling and advertising provisions (sec. 5 (e) and (f)) prohibit the use of interstate channels when labeling or advertising of distilled spirits, wine, or malt beverages does not conform to regulations, with the force and effect of law, prescribed by the Administrator. Definite standards are laid down for these regulations. The regulations are not only required to prohibit labeling and advertising that is false, misleading, obscene, or indecent, or that disparages competitors' products, but must also provide for the prevention of deception of the consumer with respect to the product or its quality. They must also prohibit, regardless of their truth, statements relating to age, manufacturing process, analyses, guaranties, and scientific or irrelevant matters that the Administrator finds likely to mislead the consumer, and must make provision for informing the consumer adequately as to the identity and quality of the product, its alcoholic content, the net contents of the package, and the person responsible for the package or the advertisement. Alcoholic content is required to be stated in connection with wines only if alcoholic content is above 14 percent by volume, and is optional in case of other wines. Alcoholic content is prohibited from being stated in the case of malt beverages. Malt beverages should not be sold on the basis of alcoholic content. The variation of alco-

holic content has little consumer importance and the industry recognizes that attempts to sell beer and other malt beverages on the basis of alcoholic content are attempts to take advantage of the ignorance of the consumer and of the pyschology created by prohibition experiences.

Legitimate members of the industry have suffered seriously from unfair competition resulting from labeling and advertising that uses such terms as "strong", "extra strength", "high test", "high proof", "pre-war strength", "14 percent original extract", and from brand names or other statements or references which include conspicuous numerals or symbols intending to suggest that the numerals or symbols represent the alcoholic content. Usually such representations of excess alcoholic content are false, but irrespective of their falsity, their abuse has grown to such an extent since repeal that the prohibition of all such statements is in the interest of the consumer and the promotion of fair competition.

The labeling and advertising requirements also compel statements as to the percentage of neutral spirits used in distilled spirits (including gin), except in case of liqueurs, cordials, cocktails, gin fizzes, high balls, bitters, and other specialties. This is for the purpose of informing the consumer of the fact that he is purchasing a product which contains neutral spirits whereas he might think he was obtaining one in which no such spirits were used. Since there is in some cases a consumer preference for neutral spirits made out of grain rather than other products, the labeling and advertising provisions require, where neutral spirits have been used, a statement of which commodity (whether grain, sugarcane and its products, fruit, or whatever the commodity may be) has been distilled to produce the neutral spirits used.

Further protection is given the consumer by prohibiting the use of trade or brand names of prominent living persons or of organizations. The use of such names frequently leads him to believe that the product behind the label was produced, endorsed, made, or used by, or in certain other ways specified in the bill identified with the individual or organization whose name appears on the label. Abbreviations and other methods of indicating the name of such individuals or organizations are similarly barred. Nothing in the provision restrains the truthful use of a name to the extent to which its use has been authorized or the use of a name used prior to the enactment of the act by the user or a person from whom he secured it through chain of title. The provision does not extend to cases of conflict within the industry as to proprietary rights in trade or brand names.

In the case of advertising, specific exemption is given to outdoor advertising in place on the date of the approval of the act, but when such advertising is rehabilitated it must conform to the advertising provisions.

Provision is made to enforce the labeling requirements at the source by means of certificates of label approval to be issued by the Administrator and to be enforced by internal-revenue and customs officers. This system was partially in effect under the codes and proved successful in preventing improperly labeled goods from reaching interstate channels. Adequate enforcement of the labeling

provision would be impracticable without such a system. Opportunity for exemption from the requirement of obtaining these certificates is afforded industry members who demonstrate that their products are not to be shipped in interstate commerce.

The labeling requirements also make it unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or held for sale after shipment therein, except as authorized by Federal law or except pursuant to regulations of the Administrator authorizing relabeling for the purpose of compliance with the labeling requirements or State law. The provision conforms to that previously enacted in the Federal Caustic Poison Act, and is believed valid under the doctrine applied in *McDermott* v. *Wisconsin* (1913) (228 U. S. 115). The provision is designed to cover two classes of cases: First, if alcoholic beverages are shipped in interstate commerce under illegal labels, the provision is intended to preserve the labels in order to prevent destruction of the evidence upon which prosecution of the violation would be based; and, second, if goods are shipped in interstate commerce under legal labels, the provision is intended to prevent the protection given the consumer by Federal law from being nullified by destruction or removal, obliteration, or mutilation of the label used in interstate commerce, or by the addition of other labels, substitution of labels, or other alteration of the labeling, prior to the article's reaching the consumer. Regulations will provide for appropriate exceptions so as to take from out of the prohibition appropriate additional labeling requirements imposed by a State pursuant to its law and not in conflict with the Federal requirements.

The labeling and advertising requirements are made applicable to State agencies. While in the usual case they will not conduct transactions in the field of operation to which these provisions are confined, to the extent that they do so they are operating in a Federal field, and the labeling and advertising provisions of the bill are so necessary to safeguard the interests of consumers that it is desirable that State agencies should be subject to them.

Hearings on regulations.—As noted above, the Administrator is specifically given power to prescribe regulations to carry into effect the provisions of this section. The last paragraph of this section provides that such regulations are to be issued only after public notice has been given and opportunity for the industry to be heard has been allowed.

PENALTIES

Section 6 provides a penalty not in excess of $1,000 for engaging in operations without a permit or for violating the unlawful practice provisions. Prior to the commencement of court proceedings, the Administrator is authorized, subject to the approval of the Attorney General, to compromise any such penalty upon payment of an amount not in excess of $500 for each offense. Sums so collected will be paid into the Treasury as miscellaneous receipts. In the event that repetitious violations are involved, the Administrator is given the power in order to prevent multiplicity of criminal proceedings, to require as part of the compromise a stipulation to the effect that the United

States may, on its own motion upon 5 days' notice to the violator, cause a consent decree to be entered in any court of competent jurisdiction, enjoining the repetition of the violation. The administrative compromise of penalties embodies a policy similar to that incorporated in many acts of Congress relating to customs, internal revenue, air navigation, immigration, and the like. The compromise would relieve the violator from all further criminal liability for the offense and for all liability to suspension or revocation of permit or to equity proceedings. The compromise provisions would not disturb any authority the Attorney General may have to compromise cases once court proceedings have been instituted.

Where the offense does not appear to be flagrant and where the violator is willing to admit his offense, it would appear to be proper to afford him an opportunity by compromise to avoid the expense of a criminal or equity proceeding and to be relieved from the penalty of suspension or revocation.

The section also provides that violations may be enjoined by district courts of the United States through appropriate proceedings in equity brought by the Attorney General in the name of the United States.

INTERLOCKING DIRECTORATES

Section 7 prohibits interlocking directorates in corporations and similar forms of business organization engaged in distilling and rectifying distilled spirits and companies connected with such companies. No person who is an officer or director of one such company may serve as an officer or director of another such company without the approval of the Administrator. The section is prospective in its operation to the extent that it relates only to those officers and directors who take their offices in the second company after the date of the enactment of the act. In general it may be said that under the section existing companies having interlocking directorates may keep their present systems but may not spread their common directorates except to companies which are formed to comply with State law. Company systems formed in the future may not have interlocking directorates except in cases where the companies are formed to comply with State law and not more than one other company in the system in which the directorates are common is a company not formed to comply with State law. The exemption of companies formed to comply with State law is inserted to take care of cases in which subsidiaries of distillers, rectifiers, or affiliates thereof have been formed or may be formed to comply with the requirements of corporation laws of some States which require that as a condition of doing business therein the corporation must be organized under their law. The individual desiring to serve in the second company must first apply to the Administrator and present evidence to him that the service in both companies will not restrain competition in interstate or foreign commerce in distilled spirits. The Administrator is required to act on the application, and court review by injunction of the Administrator's action is authorized. If the individual takes office or serves without the approval of the Administrator, in those

cases to which the section applies, or if his suit to restrain is not sustained, he is subject to a fine of not more than $1,000.

The provisions of section 6 authorizing compromise of penalties do not apply to such fines. Compliance with section 7 is not made a condition of a basic permit.

MISCELLANEOUS

Section 9 contains the definitions of terms used in the bill. Aside from the usual definitions which are inserted for the sake of drafting economy in legislation, there are other definitions which are particularly important for the purposes of this bill.

Section 9 (a) (4) defines "person" to include, in addition to business organizations which that term usually includes, the officers and employees of agencies of States or political subdivisions thereof. Many States and political subdivisions have gone into various phases of the liquor business. The only provisions of the bill which relate to such agencies are those dealing with consignment sales, labeling, and advertising. As noted above no permit is required of such agencies. The effect of the language of the definition is to treat the officers and employees of the governmental board, or whatever form the agency may take, as the ones who are subject to Federal regulation, and not the State or political subdivision itself. Wherever such agencies and officers and employees thereof are exempt from provisions of the bill, persons who hold licenses under State or local law and similar persons are not to be regarded as within the exemption and of course the State and local officials are exempt only in their official capacity. The term "affiliate" is defined to include the two or more persons who are involved where one of such persons controls the other or others and all the persons involved in the case where the control of one or more companies is in a common parent. The definition includes control which is indirect as well as that which is direct.

The definition of distilled spirits includes the products usually considered within that definition and includes them when they are for beverage, medicinal, culinary, sacramental, or other use, but excludes such products if for industrial use. This definition has the effect of eliminating from the scope of the bill industrial alcohol production and distribution. The definition of wine (sec. 9 (a) (7)) incorporates by reference the definition contained in the revenue laws and includes in addition alcoholic beverages made in the manner of wine and wine made from agricultural products other than sound ripe grapes, and imitation wine. The definition applies only to the article if it contains 7 percent or more but not more than 24 percent of alcohol by volume. Wines above 24 percent of alcohol by volume are classed as distilled spirits. In all cases, as in the case of distilled spirits, the definition eliminates industrial use but includes beverage, medicinal, culinary, sacramental, and other uses. The definition of malt beverages (sec. 9 (a) (8)) is a technical one designed to cover the beverage products of the brewing industry and includes such products regardless of their alcoholic content.

The definition of "bottle" is broader than a glass container. It includes the closed container used for the sale of distilled spirits, wine, or malt beverages at retail and ignores its size and the material from which it is made, thus including jugs, cans, barrels, and all other closed containers if for use for sale of alcoholic beverages at retail.

"Wholesaler" as used in the bill, outside the taxing provisions of section 1, means a wholesaler in accordance with the usual trade understanding and not as defined in the internal-revenue laws for tax purposes.

Appendix III.—H. R. 8870 AS REPORTED TO THE SENATE BY THE COMMITTEE ON FINANCE

AN ACT To further protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Alcohol ~~Administration~~ *Control* Act."

~~FEDERAL ALCOHOL ADMINISTRATION~~

~~SEC. 2. (a) There is hereby created the Federal Alcohol Administration as a division in the Treasury Department.~~

~~(b) The Administration shall be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall for his services receive compensation at the rate of $10,000 per annum, together with actual and necessary traveling and subsistence expenses while engaged in the exercise of his powers and duties outside the District of Columbia. No person shall be eligible to appointment, or continue in office, as Administrator if he is engaged or financially interested in, or is an officer or director of or employed by a corporation engaged in, the production or sale or other distribution of alcoholic beverages, or the financing thereof.~~

~~(c) The Administrator shall, without regard to the civil service laws and the Classification Act of 1923, as amended, appoint and fix the compensation and duties of such officers and employees as he deems necessary to carry out his powers and duties, but the compensation so fixed shall be subject to the approval of the Secretary of the Treasury. The Administrator is authorized to adopt an official seal, which shall be judicially noticed.~~

~~(d) The Administrator is authorized and directed to prescribe such rules and regulations as may be necessary to carry out his powers and duties. All rules and regulations prescribed by the Administrator shall be subject to the approval of the Secretary of the Treasury.~~

FEDERAL ALCOHOL COMMISSION

SEC. 2. (a) There is hereby established a commission to be known as the Federal Alcohol Commission, to be composed of three commissioners, who shall be appointed by the President by and with the advice and consent of the Senate. The terms of office of the commissioners first taking office shall expire, as designated by the President at the time of nomination, one at the end of the first year, one at the end of the second year, and one at the end of the third year after the date of the enactment of this Act. A successor shall have a term of office expiring three years from

the date of expiration of the term for which his predecessor was appointed, except that a person appointed to fill a vacancy occurring prior to the expiration of such term shall be appointed for the remainder of such term. No person shall be eligible for appointment as a commissioner or continue in office as a commissioner if he is engaged or financially interested in, or is an officer or director of or employed by a company engaged in, the production or sale of alcoholic beverages or the financing thereof. Each commissioner shall, for his services, receive compensation at the rate of $10,000 per annum, together with actual and necessary traveling and subsistence expenses while engaged in the performance of his duties as commissioner outside the District of Columbia.

(b) As designated by the President at the time of nomination: One of the commissioners shall be chairman of the commission and shall be the chief executive officer of the commission; another of the commissioners shall be vice-chairman of the commission and shall perform the functions and duties of the chairman in his absence or in the event of his incapacity caused by illness; and the third commissioner, who shall be a lawyer, shall be general counsel of the commission. The commission may function notwithstanding vacancies, and a majority of the commissioners in office shall constitute a quorum. The commission shall meet at the call of the chairman or a majority of its members. The commission is authorized to adopt an official seal, which shall be judicially noticed. The commission shall be entitled to free use of the United States mails in the same manner as the Executive departments.

(c) The commission shall, without regard to the civil-service laws, but subject to the Classification Act of 1923, as amended, appoint and fix the compensation and prescribe the duties of such officers and employees as may be necessary to carry out its powers and duties; except that any such officer or employee receiving a salary at the rate of $5,000 or more per annum shall be appointed by the President, by and with the advice and consent of the Senate.

(d) The commission is authorized and directed to prescribe such rules and regulations as may be necessary to carry out its powers and duties.

(e) Appropriations to carry out powers and duties of the ~~Administrator~~ *commission* shall be available for expenditure, among other purposes, for personal services and rent in the District of Columbia and elsewhere, expenses for travel and subsistence, for law books, books of reference, magazines, periodicals, and newspapers, for contract stenographic reporting services, for subscriptions for library services, for purchase of samples for analysis or use as evidence, and for holding ~~conference~~ *conferences* of State and Federal liquor control officials.

(f) The ~~Administrator~~ *commission* may, with the consent of the department or agency affected, utilize the services of any department or other agency of the Government to the extent necessary to carry out ~~his~~ *its* powers and duties and authorize officers and employees thereof to act as ~~his~~ *its* agents.

(g) The provisions, including penalties, of sections 9 and 10 of the Federal Trade Commission Act, as now or hereafter amended, shall be applicable to the jurisdiction, powers, and duties of the ~~Administrator~~ *commission*, and to any person (whether or not a corporation) subject to the provisions of laws administered by the ~~Administrator~~ *commission*.

(h) The ~~Administrator~~ *commission* is authorized to require, in such manner and form as ~~he~~ *it* shall prescribe, such reports as are necessary to carry out ~~his~~ *its* powers and duties.

(*i*) *The commission is authorized to make investigations and studies and to report thereon from time to time to the President and to the Congress, together with recommendations, with respect to matters necessary for the proper performance of the powers and duties conferred upon the commission, and with respect to the production, distribution, and consumption of alcoholic beverages, including monopolistic practices, unfair methods of competition, and concentration of ownership in the alcoholic beverages industries, and control of retail outlets and prices; advertising, labeling, and merchandising methods with respect to alcoholic beverages, including standards of identity, quality, and size and fill of container therefor; and enforcement of the twenty-first amendment, State and Federal cooperation in the administration of alcoholic beverage control laws, and methods of promoting temperance. The commission, whenever in its judgment such action will be in the public interest, may publish the results of such investigations and studies.*

(*j*) *The commission shall make a report to Congress, at the beginning of each regular session, of the administration of the functions with which it is charged, and shall include in such report the names and compensation of all persons employed by the commission.*

UNLAWFUL BUSINESSES WITHOUT PERMIT

SEC. 3. In order effectively to regulate interstate and foreign commerce in ~~distilled spirits, wine, and malt beverages~~ *distilled spirits and wine,* to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to ~~distilled spirits, wine, and malt beverages~~ *distilled spirits and wine*:

(a) It shall be unlawful, except pursuant to a basic permit issued under this Act by the ~~Administrator~~ *commission*—

(1) to engage in the business of importing into the United States ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* so imported.

This subsection shall take effect sixty days after ~~the date of the enactment of this Act~~ *a majority of the commissioners first appointed take office.*

(b) It shall be unlawful, except pursuant to a basic permit issued under this Act by the ~~Administrator~~ *commission*—

(1) to engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits or wine so distilled, produced, rectified, blended, or bottled, or warehoused and bottled.

This subsection shall take effect sixty days after ~~the date of the enactment of this Act~~ *a majority of the commissioners first appointed take office.*

(c) It shall be unlawful, except pursuant to a basic permit issued under this Act by the ~~Administrator~~ *commission*—

(1) to engage in the business of purchasing for resale at wholesale ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*: or

(2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* so purchased.

This subsection shall take effect ~~January~~ *March* 1, 1936.

This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under this Act.

PERMITS

SEC. 4. (a) The following persons shall, on application therefor, be entitled to a basic permit:

(1) Any person who, on May 25, 1935, held a basic permit as distiller, rectifier, wine producer, or importer issued by an agency of the Federal Government.

(2) Any other person unless the ~~Administrator~~ *commission* finds (A) that such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has, within five years prior to date of application, been convicted of a felony under Federal or State law *or of a violation of any Federal law relating to liquor, including the taxation thereof*; or (B) that such person is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law; or (C) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted.

(b) If upon examination of any application for a basic permit the ~~Administrator~~ *commission* has reason to believe that the applicant is not entitled to such permit, ~~he~~ *the commission* shall notify the applicant thereof and, upon request by the applicant, afford him due notice and opportunity for hearing on the application. If the ~~Administrator~~ *commission*, after affording such notice and opportunity for hearing, finds that the applicant is not entitled to a basic permit hereunder, ~~he~~ *it* shall by order deny the application stating the findings which are the basis for ~~his~~ *its* order.

(c) The ~~Administrator~~ *commission* shall prescribe the manner and form of all applications for basic permits (including the facts to be set forth therein) and the form of all basic permits, and shall specify in any basic permit the authority conferred by the permit and the conditions thereof in accordance with the provisions of this Act.

To the extent deemed necessary by the ~~Administrator~~ *commission* for the efficient administration of this Act, separate applications and permits shall be required by the ~~Administrator~~ *commission* with respect to ~~distilled spirits, wine, and malt beverages~~ *distilled spirits and wine*, and the various classes thereof, and with respect to the various classes of persons entitled to permits hereunder. The issuance of a basic permit under this Act shall not operate to deprive the United States of its remedy for any violation of **law**.

(d) A basic permit shall be conditioned upon compliance with the requirements of section 5 (relating to unfair competition and unlawful practices) *and of section 6 (relating to bulk sales and bottling)*, with the twenty-first amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to ~~distilled spirits, wine, and malt beverages~~ *distilled spirits and wine*, including taxes with respect thereto.

~~(c) (1) No basic permit issued under this Act shall contain any condition prohibiting, nor shall any rule, regulation, or order, issued under this or any other Act of Congress, prohibit, the use or sale of any barrel, cask, or keg, if made of wood and if of one or more wine gallons capacity, as a container in which to store, transport, or sell, or from which to sell, any distilled spirits, wine, or malt beverages. This subsection shall not apply to any condition in any basic permit issued under this Act or any rule, regulation, or order issued in connection therewith to the extent that such condition applies in a State in which the use or sale of any such barrel, cask, or keg is prohibited by the law of such State.~~

~~(2) It shall be unlawful for any person to package or repackage distilled spirits for sale or resale in bottles unless such person is a distiller, a rectifier of distilled spirits, or a person operating a bonded warehouse qualified under the internal revenue laws or a class 8 bonded warehouse qualified under the customs laws, holding a basic permit under this Act, or is a proprietor of an industrial alcohol plant or is an agency of a State or political subdivision thereof: *Provided*, That any other person may so package distilled spirits in bottles if he qualifies under the internal revenue laws as a rectifier and holds a basic permit issued under this Act for the rectification of distilled spirits.~~

~~(3) Notwithstanding the foregoing provisions of this subsection, no person who is subject to the occupational tax imposed by section 3244 "Fourth" of the Revised Statutes, as amended (U. S. C., Supp. VII, title 26, sec. 1394 (c)), on retail dealers in liquors shall package or repackage distilled spirits for sale or resale in bottles or be eligible to qualify as a rectifier of distilled spirits, and no such person, except a bona fide hotel or club, shall, for purposes of sale, remove from any such barrel, cask, or keg any distilled spirits contained therein. Any person who violates the provisions of this paragraph or paragraph (2) shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both, and shall forfeit to the United States all distilled spirits with respect to which the violation occurs, and the bottles in which packaged.~~

~~(f)~~ (*e*) A basic permit shall by order of the ~~Administrator~~ *commission*, after due notice and opportunity for hearing to the permittee, (1) be revoked, or suspended for such period as the ~~Administrator~~

commission deems appropriate, if the ~~Administrator~~ *commission* finds that the permittee has willfully violated any of the conditions thereof, provided that for a first violation of the conditions thereof the permit shall be subject to suspension only; or (2) be revoked if the ~~Administrator~~ *commission* finds that the permittee has not engaged in the operations authorized by the permit for a period of more than two years; or (3) be annulled if the ~~Administrator~~ *commission* finds that the permit was procured through fraud, or misrepresentation, or concealment of material fact. The order shall state the findings which are the basis for the order.

~~(g)~~ (*f*) Orders of the ~~Administrator~~ *commission* with respect to any denial of application, suspension, revocation, annulment, or other proceedings, shall be served (1) in person by any officer or employee of the ~~Administration~~ *commission* designated by the ~~Administrator~~ *commission* or any internal revenue or customs officer authorized by the ~~Administrator~~ *commission* for the purpose, or (2) by mailing the order by registered mail, addressed to the applicant or respondent at his last known address in the records of the ~~Administrator~~ *commission*.

~~(h)~~ (*g*) A basic permit shall continue in effect until suspended, revoked, or annulled as provided herein, or voluntarily surrendered; except that (1) if leased, sold or otherwise voluntarily transferred, the permit shall be automatically terminated thereupon, and (2) if transferred by operation of law or if actual or legal control of the permittee is acquired, directly or indirectly, whether by stock-ownership or in any other manner, by any person, then such permit shall be automatically terminated at the expiration of thirty days thereafter: *Provided,* That if within such thirty-day period application for a new basic permit is made by the transferee or permittee, respectively, then the outstanding basic permit shall continue in effect until such application is finally acted on by the ~~Administrator~~ *commission*.

~~(i)~~(*h*) An appeal may be taken by the permittee or applicant for a permit from any order of the ~~Administrator~~ *commission* denying an application for, or suspending, revoking, or annulling, a basic permit. Such appeal shall be taken by filing, in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, within sixty days after the entry of such order, a written petition praying that the order of the ~~Administrator~~ *commission* be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon the ~~Administrator~~ *commission*, or upon any officer designated by ~~him~~ *it* for that purpose, and thereupon the ~~Administrator~~ *commission* shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the ~~Administrator~~ *commission* shall be considered by the court unless such objection shall have been urged before the ~~Administrator~~ *commission* or unless there were reasonable grounds for failure so to do. The finding of the ~~Administrator~~ *commission* as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in

the proceeding before the ~~Administrator~~ *commission*, the court may order such additional evidence to be taken before the ~~Administrator~~ *commission* and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The ~~Administrator~~ *commission* may modify ~~his~~ *its* findings as to the facts by reason of the additional evidence so taken, and ~~he~~ *it* shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and ~~his~~ *its* recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the ~~Administrator~~ *commission* shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall, unless specifically ordered by the court *to the contrary*, operate as a stay of the ~~Administrator~~'s *commission's* order.

~~(j)~~ *(i)* No proceeding for the suspension or revocation of a basic permit for violation of any condition thereof relating to compliance with Federal law shall be instituted by the ~~Administrator~~ *commission* more than eighteen months after conviction of the violation of Federal law, or, if no conviction has been had, more than three years after the violation occurred; and no basic permit shall be suspended or revoked for a violation of any such condition thereof if the alleged violation of Federal law has been compromised by any officer *or agency* of the Government authorized to compromise such violation.

UNFAIR COMPETITION AND UNLAWFUL PRACTICES

SEC. 5. It shall be unlawful for any person engaged in business as a distiller, ~~brewer,~~ rectifier, blender, or other producer, or as an importer or wholesaler, of ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate:

(a) Exclusive outlet: To require, by agreement or otherwise, that any retailer engaged in the sale of ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*, purchase any such products from such person to the exclusion in whole or in part of ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* sold or offered for sale by other persons in interstate or foreign commerce, if such requirement is made in the course of interstate or foreign commerce, or if such person engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such requirement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce; or

(b) "Tied house": To induce through any of the following means, any retailer, engaged in the sale of ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*, to purchase any such products from such person to the exclusion in whole or in part of ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such

person engages in the practice of using such means, or any of them, to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce: (1) By acquiring or holding (after the expiration of any existing license) any interest in any license with respect to the premises of the retailer; or (2) by acquiring any interest in real or personal property owned, occupied, or used by the retailer in the conduct of his business; or (3) by furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs *(excepting signs not exceeding $100 in aggregate value to any retailer in any calendar year)*, supplies, money, services, or other thing of value, *except advertising specialties and graphic arts advertising items of paper or paper-like substance and* subject to such *further* exceptions as the ~~Administrator~~ *commission* shall by regulation prescribe, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest and the purposes of this subsection; or (4) by paying or crediting the retailer for any advertising, display, or distribution service; or (5) by guaranteeing any loan or the repayment of any financial obligation of the retailer; or (6) by extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions, as ascertained by the ~~Administrator~~ *commission* and prescribed by regulations by ~~him~~ *it*; or (7) by requiring the retailer to take and dispose of a certain quota of any of such products; or

(c) Commercial bribery: To induce through any of the following means, any trade buyer engaged in the sale of ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*, to purchase any such products from such person to the exclusion in whole or in part of ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such person engages in the practice of using such means, or any of them, to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce: (1) By commercial bribery; or (2) by offering or giving any bonus, premium, or compensation to any officer, or employee, or representative of the trade buyer; or

(d) Consignment sales: To sell, offer for sale, or contract to sell to any trade buyer engaged in the sale of ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*, or for any such trade buyer to purchase, offer to purchase, or contract to purchase, any such products on consignment or under conditional sale or with the privilege of return or on any basis otherwise than a bona fide sale, or where any part of such transaction involves, directly or indirectly, the acquisition by such person from the trade buyer or his agreement to acquire from the trade buyer other ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*—if such sale, purchase, offer, or contract is

made in the course of interstate or foreign commerce, or if such person or trade buyer engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such sale, purchase, offer, or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce; or

(e) Labeling.—To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the ~~Administrator~~ *commission*, with respect to packaging, marking, branding, and labeling and size and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the ~~Administrator~~ *commission* finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (~~except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by State law and~~ except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or ~~importer of the product~~ *distributor of domestically bottled products and the manufacturer and importer of imported products;* (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification ~~or in case of gin whether or not produced by blending or rectification,~~ if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, *or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled*; (4) as will prohibit statements on the label that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; and (5) as will prevent deception of the consumer by use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, and as will prevent the use of a graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been indorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided*, That this clause shall not apply to the use of the name of any person engaged in business as a distiller, ~~brewer,~~ rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of ~~distilled spirits, wine, or~~

~~malt beverages~~ *distilled spirits or wine*, nor to the use by any person of a trade or brand name used by him or his predecessor in interest prior to the date of the enactment of this Act; including regulations requiring, at time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported products. ~~No person shall remove from Government custody after purchase at any Government sale any distilled spirits, wine, or malt beverages in bottles to be held for sale, until such bottles are packaged, marked, branded, and labeled in conformity with the requirements of this subsection.~~

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except pursuant to regulations of the ~~Administrator~~ *commission* authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

In order to prevent the sale or shipment or other introduction of ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection, no bottler, or importer of ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*, shall, after such date as the ~~Administrator~~ *commission* fixes as the earliest practicable date for the application of the provisions of this subsection to any class of such persons (but not later than ~~January~~ *March* 1, 1936, and only after thirty days' public notice), bottle or remove from customs custody for consumption ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*, respectively, unless the bottler or importer, upon application to the ~~Administrator~~ *commission*, has obtained and has in his possession a certificate of label approval covering the ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*, issued by the ~~Administrator~~ *commission* in such manner and form as ~~he~~ *it* shall by regulations prescribe: *Provided*, That any such bottler shall be exempt from the requirements of this subsection if the bottler, upon application to the ~~Administrator~~ *commission*, shows to the satisfaction of the ~~Administrator~~ *commission* that the ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. Officers of internal revenue and customs are authorized and directed to withhold the release of such products from the bottling plant or customs custody unless such certificates have been obtained, or unless the application of the bottler for exemption has been granted by the ~~Administrator~~ *commission*. The district courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory, shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in ~~part,~~ *part* any final action by the ~~Administrator~~ *commission* upon any application under this subsection; or

(f) Advertising: To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of ~~distilled spirits,~~

~~wine, or malt beverages~~ *distilled spirits or wine*, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations, to be prescribed by the ~~Administrator~~ *commission*, (1) as will prevent deception of the consumer with respect to the products advertised and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guaranties, and scientific or irrelevant matters as the ~~Administrator~~ *commission* finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products advertised, the alcoholic content thereof (~~except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are prohibited and~~ except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), and the person responsible for the advertisement; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification ~~or in case of gin whether or not produced by blending or rectification,~~ if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, *or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled*; (4) as will prohibit statements that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; (5) as will prevent statements inconsistent with any statement on the labeling of the products advertised. This subsection shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising. *The prohibitions of this subsection and regulations thereunder shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, rectifier, or other producer, or as an importer or wholesaler, of distilled spirits or wine, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate.*

The provisions of subsections (a), (b), and (c) shall not apply to any act done by an agency of a State or political subdivision thereof, or by any officer or employee of such agency.

The ~~Administrator~~ *commission* shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing regulations to carry out the provisions of this section.

BULK SALES AND BOTTLING

Sec. 6. (a) It shall be unlawful for any person—

(1) To sell or offer to sell, contract to sell, or otherwise dispose of distilled spirits in bulk except, under regulations of the commission, for export or to the following, or to import distilled spirits in bulk except, under such regulations, for sale to or for use by the following: A distiller, rectifier of distilled spirits, person operating a bonded warehouse qualified under the internal-revenue laws or a class 8 bonded warehouse qualified under the customs laws, a wine maker

for the fortification of wines, a proprietor of an industrial alcohol plant, or an agency of the United States or any State or political subdivision thereof.

(2) To sell or offer to sell, contract to sell, or otherwise dispose of warehouse receipts for distilled spirits in bulk unless such warehouse receipts require that the warehouseman shall package such distilled spirits, before delivery, in bottles labeled and marked in accordance with law, or deliver such distilled spirits in bulk only to persons to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk.

(3) To bottle distilled spirits unless the bottler is a person to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk.

(b) Any person who violates the requirements of this section shall, upon conviction thereof, be fined not more than $5,000 or imprisoned for not more than one year or both, and shall forfeit to the United States all distilled spirits with respect to which the violation occurs and the containers thereof.

(c) The term "in bulk" means in containers having a capacity in excess of one wine gallon.

PENALTIES

SEC. ~~6~~ *7*. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States Court for any Territory, of the District where the offense is committed or threatened or of which the offender is an inhabitant or has his principal place of business, are hereby vested with jurisdiction of any suit brought by the Attorney General in the name of the United States, to prevent and restrain violations of any of the provisions of this Act. Any person violating any of the provisions of sections 3 or 5 shall be guilty of a misdemeanor and upon conviction thereof be fined not more than $1,000 for each offense. Subject to the approval of the Attorney General, the ~~Administrator~~ *commission* is authorized, prior to commencement of court proceedings with respect to any violation of this Act, to compromise the liability arising with respect to such violation (1) upon payment of a sum not in excess of $500 for each offense, to be collected by the ~~Administrator~~ *commission* and to be paid into the Treasury as miscellaneous receipts, and (2) in case of repetitious violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation that the United States may, on its own motion upon five days' notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation.

INTERLOCKING DIRECTORATES

SEC. ~~7~~ *8*. (a) Except as provided in subsection (b), it shall be unlawful for any individual to take office, after the date of the enactment of this Act, as an officer or director of any company, if his doing so would make him an officer or director of more than one company engaged in business as a distiller, rectifier, or blender of distilled spirits, or of any such company and of a company which is an affiliate of any company engaged in business as a distiller, rectifier, or blender of distilled spirits, or of more than one company which is an affiliate

or any company engaged in business as a distiller, rectifier, or blender of distilled spirits, unless, prior to taking such office, application made by such individual to the ~~Administrator~~ *commission* has been granted and after due showing has been made to ~~him~~ *it* that service by such individual as officer or director of all the foregoing companies of which he is an officer or director together with service in the company with respect to which application is made will not substantially restrain or prevent competition in interstate or foreign commerce in distilled spirits. The ~~Administrator~~ *commission* shall, by order, grant or deny such application on the basis of the proof submitted to ~~him~~ *it* and ~~his~~ *its* finding thereon. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States ~~courts~~ *court* for any Territory shall have jurisdiction of suits to enjoin, annul, or suspend *in whole or in part* any final action by the ~~Administrator~~ *commission* upon any application under this subsection.

(b) An individual may, without regard to the provisions of subsection (a), take office as an officer or director of a company described in subsection (a) while holding the position of officer or director of any other such company if such companies are affiliates at the time of his taking office and if—

(1) Such companies are affiliates on the date of the enactment of this Act; or

(2) Each of such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the law of such State; or

(3) One or more such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the laws of such State, and the other one or more of such companies not so organized, is in existence on the date of the enactment of this Act; or

(4) One or more of such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the law of such State, and not more than one of such companies is a company which has not been so organized and which has been organized after the date of the enactment of this Act.

(c) As used in this section, the term "company" means a corporation, joint stock company, business trust, or association but does not include any agency of a State or political subdivision thereof or any officer or employee of any such agency.

(d) Any individual taking office in violation of this section shall be punished by a fine of not exceeding $1,000.

DISPOSAL OF FORFEITED DISTILLED SPIRITS AND WINE

SEC. 9. Notwithstanding any provisions of existing law, distilled spirits and wine forfeited or condemned summarily or pursuant to court decree or otherwise, by or under any law of the United States, shall not be sold or otherwise disposed of publicly or privately but shall be destroyed

at such time as such forfeiture or condemnation has become final; except that any such distilled spirits and wine certified by Government chemists to be of a quality equivalent to United States Pharmacopœia quality or to be suitable for medicinal purposes shall be placed in the custody of the United States Public Health Service and disposed of by the Surgeon General of such Service, in accordance with regulations to be prescribed by him, to hospitals operated or maintained in whole or in part by the United States, for use by them for medicinal purposes only.

FEDERAL ALCOHOL CONTROL ADMINISTRATION

SEC. 8 *10.* The Federal Alcohol Control Administration established by Executive order under the provisions of Title I of the National Industrial Recovery Act is hereby abolished. All papers, records, and property of such Federal Alcohol Control Administration are hereby transferred to the ~~Administrator~~ *commission.* This section shall take effect ~~on the date that the Administrator first appointed under this Act takes office~~ *when a majority of the commissioners first appointed under this Act have taken office.*

MISCELLANEOUS

SEC. 9 *11.* (a) As used in this Act—

~~(1) The term "Administrator" means the head of the Federal Alcohol Administration.~~

(1) The term "commission" means the Federal Alcohol Commission.

(2) The term "United States" means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means Alaska, Hawaii, and Puerto Rico.

(3) The term "interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(4) The term "person" means individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof; and the term "trade buyer" means any person who is a wholesaler or retailer.

(5) The term "affiliate" means any one of two or more persons if one of such persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of the other or others of such persons; and any one of two or more persons subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

(6) The term "distilled spirits" means ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use.

(7) The term "wine" means (1) wine as defined in section 610 and section 617 of the Revenue Act of 1918, (U. S. C., title 26,

secs. 441 and 444) as now in force or hereafter amended, and (2) other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake; in each instance only if containing not less than 7 per centum and not more than 24 per centum of alcohol by volume, and if for non-industrial use.

~~(8) The term "malt beverage" means a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.~~

~~(9)~~ (8) The term "bottle" means any container, irrespective of the material from which made, for use for the sale of ~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* at retail.

(b) The right to amend or repeal the provisions of this Act is expressly reserved.

(c) If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Amend the title so as to read: "An Act to further protect the revenue derived from distilled spirits and wine, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes."

Passed the House of Representatives July 24, 1935.

Attest:

SOUTH TRIMBLE,
Clerk.

Appendix IV.—REPORT OF THE COMMITTEE ON FINANCE ON H. R. 8870

(Report No. 1215. Federal Alcohol Control Act)

The Committee on Finance, to whom was referred the bill (H. R. 8870) to further protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

General Statement

This bill covers the industries engaged in the distilling, blending, rectifying, or other production of distilled spirits and wine, or in the importing or wholesaling of such products, or in the bottling, or warehousing and bottling, of distilled spirits. The bill is designed to supplement the present Federal laws relating to such industries so as to provide for the further protection of the revenue derived therefrom, regulate interstate and foreign commerce in nonindustrial distilled spirits and wine, enforce the postal laws with respect thereto, and enforce the twenty-first amendment.

The bill is founded on the principle that, for the protection of the public and adequate conservation of the revenue, Federal regulation is necessary. These industries are Nation-wide in their extent, profoundly affect many phases of national life, and present problems national in their scope. State regulation is inadequate, by reason of practical and constitutional limitations, to meet the problems presented. Federal regulation, in the field in which the Constitution permits the exercise of Federal authority, is necessary to deal with these problems.

Experience prior to prohibition demonstrated that the individual States by reason of the diversity of their laws and the fact that practically all alcoholic beverage producers and large-scale distributors did an interstate business, could not alone provide those safeguards necessary for the protection of the revenue of the United States, prevent the use of the facilities of interstate and foreign commerce and the mails to carry on unlawful and deceptive practices, and protect their own citizens from the evils which are always present in an inadequately regulated liquor traffic. That situation holds true today. Further, during prohibition, unscrupulous persons entered into the liquor business with the consequences known to all. The bootlegger and the racketeer have not yet disappeared from our national life. Under existing Federal law there is no means of keeping the criminal from entering the legalized liquor field. The executive branch of the Government (except to a limited extent in the case of

distilleries) is powerless to prevent the most notorious criminal from entering into the business of production or distribution of alcoholic beverages. The revenue cannot be adequately protected, the "tied-house" control cannot be curbed, the public cannot be protected from unscrupulous advertising, the consumer cannot be protected from deceptive labeling practices; in short, the legalized liquor traffic cannot be effectively regulated, if the door is left open for highly financed gangs of criminals and racketeers to enter into the business of liquor production and distribution.

Even if the present Federal law were adequate to prevent the criminal from entering the liquor field, there would still remain the problem of control of the unethical minority in the business, the activities of which are beyond State power and require regulation in the public interest. The internal revenue, Federal trade, and food and drug laws are insufficient for this purpose. Protection of the consumer and the elimination of improper practices in this industry are imperative, and additional legislation to accomplish these purposes is necessary.

The codes of fair competition for the liquor industry under the National Industrial Recovery Act represented efforts to meet many of the evils outlined above and to accomplish many of the purposes of this bill. The adoption of the twenty-first amendment took place with unexpected speed. When repeal became effective on December 5, 1933, Congress was not in session, nor was there legislation on the books adequate to control the alcoholic beverage industries. Codes of fair competition under the National Industrial Recovery Act were availed of to meet the situation until Congress had had an opportunity to legislate. This view as to the temporary character of the codes appears in their preamble. It was expected that Congress would, at the next session, enact appropriate legislation. Nevertheless the code system continued in effect, without the enactment of legislation by Congress, from December 1933, until May 27 last, when the Supreme Court handed down its decision in the case of *Schechter Poultry Corporation* v. *United States*. As a result of that decision, the codes are no longer being enforced, and since that date the several alcoholic beverage industries have been without Federal supervision, except such as is incident to the collection of the revenues.

Under the code system a voluntary code for the brewing industry (already in existence at the time of repeal as a result of 3.2 beer legislation of Mar. 22, 1933) was approved by the President. At the same time, the President imposed codes upon the other alcoholic beverage industries, namely, the distillers, rectifiers, importers, wholesalers, and wine producers. By Executive order under the National Industrial Recovery Act the President established the Federal Alcohol Control Administration to administer these codes and certain related functions. The bill embodies in statutory form so much of the former code system as the committee now deems appropriate and within the constitutional power of Congress to enact. In general, it may be said that except with respect to malt beverages the bill as amended by the committee incorporates the greater part of the system of Federal control which was enforced by the Government under the codes.

The outstanding exceptions are that all provisions relating to open-price competition, including posting of prices and prohibition of guar-

antees against decline in price and of refunds, rebates, and concessions, have been omitted, together with the system of code authorities, divisional committees, and regional boards to aid in administering the codes.

The proposed legislation, by providing a Federal agency to supervise the aspects of the liquor industry within the range of Federal power, a permit system under which that supervision can be effective, and methods to restrict unlawful and unfair practices in the liquor business, will, it is believed, do much to protect the revenue and to prevent the recurrence of those evils known to be present in the liquor traffic in the past and which no fair-minded citizen wishes to be restored and maintained.

A more detailed discussion of the objectives of the bill, together with a section by section analysis of its provisions (subject to modifications made on the floor of the House), will be found in the report of the Ways and Means Committee of the House of Representatives (H. Rept. No. 1542, 74th Cong.). The bill reported by your committee adopts, in general, the plan of control embodied in the House bill. However, the committee has made a number of amendments, many of which are substantial in character. At the same time it should be said that a large number of amendments shown are clerical in character, made necessary by changing the administrative agency to a commission and eliminating malt beverages (hereinafter discussed). A discussion of the more important of the amendments follows:

FEDERAL ALCOHOL COMMISSION

The House bill (sec. 2) established the Federal Alcohol Administration as a division of the Treasury Department. The Administrator was to be appointed by the President, by and with the advice and consent of the Senate, but his rules and regulations were subject to the approval of the Secretary of the Treasury. The compensation of his employees was subject to like approval. Both the Treasury Department and the Federal Alcohol Control Administration vigorously opposed these provisions on the ground that while the provisions of the bill would be of great assistance in preventing evasion of taxes and facilitating collection of the revenue, the provisions did not involve the levying and collection of taxes which is the Treasury Department's sole function with regard to liquor. The provisions of the House bill were also opposed on the ground that authority and responsibility were divorced under the set-up proposed and that thereby sound and efficient administration would be seriously hampered.

The committee has amended these provisions so as to create an independent agency similar to the Federal Alcohol Control Administration which was charged with the administration of the several codes. The committee has provided for a Federal Alcohol Commission, composed of three members. Such a commission, instead of a single director provided by the House bill, will, it is believed, aid in preventing arbitrary and improper action in one of the most difficult fields of Government administration. In the interest of economy the principal officials of the new agency, namely, the chairman, vice chairman, and general counsel, are to constitute the commission. The salaries are fixed at $10,000, the same salary as that of

the members of the Federal Alcohol Control Administration, and that fixed by the House bill for the Administrator. The Commissioners will be appointed by the President, subject to Senate confirmation.

The Commissioners will hold terms of office of 3 years except that the Commissioners first appointed will be on a staggered basis of 1, 2, and 3 years.

The bill retains the House provision abolishing the Federal Alcohol Control Administration which agency has remained in existence pursuant to the recent legislation extending the National Recovery Administration.

Under the House bill the employees of the Administration were exempt from both the civil-service laws and the Classification Act of 1923. The amendment recommended by the committee requires the salaries of employees of the Commisson to be fixed in accordance with the Classification Act and makes the further provision that no employee shall receive a salary of $5,000 or more unless appointed by the President, by and with the advice and consent of the Senate. Employees of a less salary will be appointed by the Commission.

The amendment recommended by the committee also authorizes the Commission to make certain investigations and studies and report thereon to the President and to the Congress. It is believed that such investigations and studies and voluntary activities of the Commission in connection therewith will prove as valuable in obtaining law observance by the alcohol beverage industries as the regulatory provisions of the bill. The Commission is also required to make an annual report to the Congress which shall, among other matters, include the names and compensation of employees of the Commission.

BULK SALES AND BOTTLING

The House bill (sec. 4 (e)) permitted the distribution of distilled spirits in bulk, i. e., in containers having a capacity of more than 1 wine gallon, to wholesalers, retailers (including hotels, restaurants, clubs and saloons), and to consumers, as well as to distillers and rectifiers, provided the barrel, cask, keg, or other container was made of wood. The only exception related to bulk distribution into States whose laws prohibited bulk sales. On the other hand, while bulk sales were freely permitted, only a limited class of persons receiving bulk goods were permitted to bottle them, principally distillers, rectifiers, and certain warehousemen. Further, while bulk goods could be sold to the consumer by retailers the only retailers who could dispense bulk goods by the drink were bona fide hotels and clubs.

The committee recommends an amendment eliminating the House provisions and prohibiting bulk distribution. The committee is of the opinion that restriction of bulk distribution is necessary for the following reasons:

First. Bulk liquor in the hands of wholesalers, retailers, and other persons whose plants are not subject to constant Treasury supervision and at whose plants Treasury inspectors are not stationed makes it likely that rectifying, blending, or bottling operations will be carried on in violation of law, and also that the bottling of liquors under improper labels and the bottling of liquors that have been tam-

pered with in various ways not disclosed to the purchaser, will be engaged in. Control of bulk distribution and the privilege of bottling is essential if labeling requirements are to be adequately enforced, evasion of rectifiers' tax prevented, and adulteration of liquor controlled.

Second. The right of wholesalers and retailers to have bulk goods on the premises facilitates the use of wholesale and retail outlets for the disposition of bootleg liquor. The refilling of bulk containers for legitimate liquor with liquor from bootleg sources is an easy matter. With the possession of bulk liquors limited principally to distillers, rectifiers, and certain warehousemen, the presence of such liquors on other premises indicates that the liquors were obtained from illegitimate sources. The Treasury Department estimates approximately $5,000,000 additional appropriation would be necessary annually for adequate policing of wholesale and retail outlets if wholesale and retail outlets were permitted to handle bulk goods.

Third. Some 18 States now have legislation affirmatively prohibiting bulk sales within the State to wholesalers, retailers, or consumers. The laws of 9 States still prohibit all sale of distilled spirits, and the laws of 11 States by reason of establishment of liquor monopolies or State stores systems control bulk sales within the State. If the Federal Government is to adequately enforce the protection afforded by the twenty-first amendment with respect to these States, bulk distribution must be prohibited. Such distribution, despite local laws relating to bulk sales, makes possible the bringing of bulk goods into the State or into adjoining States and greatly facilitates the violation of the local laws.

Fourth. Bulk distribution breaks down the control over bottling established by the Treasury Department through its licensing of bottle manufacturers and the control over the use of bottles established by that Department pursuant to the Bottling Act passed at the last session of Congress.

The committee amendment prohibits all bulk distribution except to distillers, rectifiers, operators of internal-revenue bonded warehouses or customs manipulation bonded warehouses, proprietors of industrial alcohol plants, and State agencies. It thereby prohibits the dispensing of liquor from bulk packages and, of course, eliminates necessity for consideration of the preferential treatment given to hotels and clubs by the House bill. The committee amendment retains a valuable feature of the House bill under which bottling was controlled and limits bottling to those persons named above who are entitled to receive bulk goods. The committee amendment does not discriminate between distribution in glass, wood, steel, or other containers. So far as the committee amendment is concerned containers of any material can be used for distribution both in bulk and in packages of a gallon or less. Any limitations as to the kind of materials that can be used for containers will flow not from the committee amendment, but from the provisions of the Bottling Act previously passed by Congress.

The restriction of bulk distribution was urged by the Federal Alcohol Control Administration, the Treasury Department, the National Conference of State Liquor Control Officials, various State liquor control authorities, and, with the exception of one group of

wholesalers, by all the liquor trade associations appearing before the committee. Under the codes of fair competition for distillers, rectifiers, importers, and wholesalers, bulk distribution of distilled spirits was prohibited substantially in accordance with the principles set forth in the committee amendment, and these provisions, it is understood, were fully acquiesced in by the several industries as represented by their respective code authorities. Since the termination of the codes the Treasury has attempted to control certain phases of the bulk distribution and bottling problem through regulations recently promulgated. The validity of these regulations has been seriously questioned.

MALT BEVERAGES

Under the House bill the various branches of the malt-beverage industry were subjected to varying degrees of regulation. Importers and wholesalers, for instance, of malt beverages were required to obtain basic permits before doing business; and the provisions against unfair competition and unlawful practices applied to brewers and importers and wholesalers of malt beverages. It was emphasized before your committee that a comparatively small percentage of brewers distributed their products in interstate or foreign commerce, and the power to regulate such commerce afforded the constitutional basis for the provisions relating to unfair competition and unlawful practices. It may be observed in this connection that the brewing industry operated under a voluntary code under the code system, whereas the President imposed codes upon the other alcoholic beverage industries, namely, the distillers, rectifiers, importers, wholesalers, and wine producers. Aside from these facts, however, your committee took the position that the application of the bill should be limited to distilled spirits and wines.

TRADE PRACTICES

The House bill (sec. 5) prohibited two classes of trade practices. The first class of these prohibited practices were those which tended to produce monopolistic control of retail outlets, such as arrangements for exclusive outlets, creation of tied houses, commercial bribery, and sales on consignment or with the privilege of return. The reports of the National Commission on Law Observance and Enforcement (Wickersham Commission) and of other agencies that conducted surveys of liquor enforcement problems, all indicated that control by producers and wholesalers of retail outlets through the various devices such as those prohibited by the bill has been productive not only of monopoly but also of serious social and political evils which were in large measure responsible for bringing on prohibition. The bill seeks to prevent the recurrence of these evils in the fields that cannot be reached by the States, provided the evils occur in interstate commerce or reach such an extent in the particular case that they constitute a substantial restraint on interstate commerce or deterrent to the free flow of interstate commerce in distilled spirits and wines.

The second class of unfair practices prohibited by the bill are those relating to false labeling and false advertising or labeling or advertise-

ing that is not adequately informative, to the end of affording the consumer adequate protection and of preventing unfair competition.

The bill as reported by the committee retains the House unfair practice provisions with certain amendments. The prohibitions against creation of tied houses through furnishing of signs, supplies, and the like have been modified by two exceptions. The first is that an industry member may furnish a retailer signs to an amount not exceeding $100 in aggregate value in any calendar year. The second exception is that the prohibition shall not apply to the furnishing of advertising specialties of paper or paper-like substance or graphic arts items of similar materials. The tied-house provisions, it should be noted, relate to the acquisition by industry members of control over theretofore independent retail establishments and do not prohibit industry members from continuing to operate retail outlets heretofore established by them and wholly owned and operated by them, nor the establishment by industry members of new retail outlets of such character.

The committee has recommended the insertion of a new provision in the false-labeling and false-advertising provisions so as to make it clear that in the case of gin whether produced by a process of original distillation in a distillery or by blending or rectification in a rectifying plant, the gin shall show the percentage of the neutral spirits contained therein that are derived from each of the respective raw material sources, such as grain, fruit, and sugarcane and its products such as molasses. The amendment also provides similar requirements as to the source of neutral spirits sold straight without blending. The requirement of the House bill that other blended and rectified distilled spirits, except cordials, liqueurs, and specialties, shall be labeled so as to inform the consumer of the percentage of neutral spirits contained therein and the percentage of such neutral spirits derived from each of the respective commodity sources, is retained without change.

The committee amendments eliminate the requirement as to the labeling of distilled spirits and wine purchased at Government sales after seizure by the Government for violation of law. In lieu thereof it is provided (see new sec. 9) that distilled spirits and wine forfeited and condemned summarily or pursuant to court decree or otherwise, by or under any law of the United States, shall not be disposed of publicly or privately, but shall be destroyed.

This provision will protect the public from the placing upon the market of seized bootleg liquor and other liquor from unknown sources. Such liquor may be of inferior quality or adulterated. Moreover, the wholesaler or retailer purchasing such liquor from the Government, is by reason of lack of information as to its origin and character (neither of which can be adequately supplied by data obtained through chemical analysis), unable properly to label or relabel the goods in conformity with law. In consequence, the consumer purchasing these goods from a wholesaler or retailer is usually in the position of buying a pig in the poke. The amendment will also prevent the present situation whereby legitimate distributors and importers who pay internal-revenue taxes and import duties have to meet competition from goods sold by the Government, frequently at prices less than the amount of tax owed to the Government. Such goods also often bear labels identical with those handled by the legiti-

mate distributor or importer in circumstances under which the authenticity of the label and the genuineness of the goods is open to most serious doubts.

An exception is made to the destruction of the forfeited and condemned liquors whereby, if they are found to be of United States Pharmacopoeia quality or suitable for medicinal purposes, they may be distributed under the direction of the Surgeon General of the Public Health Service to Government hospitals for medicinal use only.

The committee amendments include a clarifying provision which makes it definite that the industry member, and not the newspaper or periodical publisher or radio broadcaster, is responsible for any advertising of liquor or wines that fails to conform to the commission's regulations requiring informative and prohibiting false advertising.

APPENDIX V.—H. R. 8870 AS PASSED BY THE SENATE, WITH THE AMENDMENTS OF THE SENATE NUMBERED

AN ACT To further protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Alcohol (1)~~Administration~~ *Control* Act."

(2)~~FEDERAL ALCOHOL ADMINISTRATION~~

~~SEC. 2. (a) There is hereby created the Federal Alcohol Administration as a division in the Treasury Department.~~

~~(b) The Administration shall be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall for his services receive compensation at the rate of $10,000 per annum, together with actual and necessary traveling and subsistence expenses while engaged in the exercise of his powers and duties outside the District of Columbia. No person shall be eligible to appointment, or continue in office, as Administrator if he is engaged or financially interested in, or is an officer or director of or employed by a corporation engaged in, the production or sale or other distribution of alcoholic beverages, or the financing thereof.~~

~~(c) The Administrator shall, without regard to the civil-service laws and the Classification Act of 1923, as amended, appoint and fix the compensation and duties of such officers and employees as he deems necessary to carry out his powers and duties, but the compensation so fixed shall be subject to the approval of the Secretary of the Treasury. The Administrator is authorized to adopt an official seal, which shall be judicially noticed.~~

~~(d) The Administrator is authorized and directed to prescribe such rules and regulations as may be necessary to carry out his powers and duties. All rules and regulations prescribed by the Administrator shall be subject to the approval of the Secretary of the Treasury.~~

FEDERAL ALCOHOL COMMISSION

SEC. 2. (a) There is hereby established a commission to be known as the Federal Alcohol Commission, to be composed of three commissioners, who shall be appointed by the President by and with the advice and consent of the Senate. Not more than two members of the commission shall be members of the same political party. The terms of office of the commissioners first taking office shall expire, as designated by the President

at the time of nomination, one at the end of the first year, one at the end of the second year, and one at the end of the third year after the date of the enactment of this Act. A successor shall have a term of office expiring three years from the date of expiration of the term for which his predecessor was appointed, except that a person appointed to fill a vacancy occurring prior to the expiration of such term shall be appointed for the remainder of such term. No person shall be eligible for appointment as a commissioner or continue in office as a commissioner if he is engaged or financially interested in, or is an officer or director of or employed by a company engaged in, the production or sale or other distribution of alcoholic beverages or the financing thereof. Each commissioner shall, for his services, receive compensation at the rate of $10,000 per annum, together with actual and necessary traveling and subsistence expenses while engaged in the performance of his duties as commissioner outside the District of Columbia.

(b) As designated by the President at the time of nomination: One of the commissioners shall be chairman of the commission and shall be the chief executive officer of the commission; another of the commissioners shall be vice-chairman of the commission and shall perform the functions and duties of the chairman in his absence or in the event of his incapacity caused by illness; and the third commissioner, who shall be a lawyer, shall be general counsel of the commission. The commission may function notwithstanding vacancies, and a majority of the commissioners in office shall constitute a quorum. The commission shall meet at the call of the chairman or a majority of its members. The commission is authorized to adopt an official seal, which shall be judicially noticed. The commission shall be entitled to free use of the United States mails in the same manner as the Executive departments.

(c) The commission shall, without regard to the civil-service laws, but subject to the Classification Act of 1923, as amended, appoint and fix the compensation and prescribe the duties of such officers and employees as may be necessary to carry out its powers and duties; except that any such officer or employee receiving a salary at the rate of $5,000 or more per annum shall be appointed by the President, by and with the advice and consent of the Senate.

(d) The commission is authorized and directed to prescribe such rules and regulations as may be necessary to carry out its powers and duties.

(e) Appropriations to carry out powers and duties of the (3)~~Administrator~~ *commission* shall be available for expenditure, among other purposes, for personal services and rent in the District of Columbia and elsewhere, expenses for travel and subsistence, for law books, books of reference, magazines, periodicals, and newspapers, for contract stenographic reporting services, for subscriptions for library services, for purchase of samples for analysis or use as evidence, and for holding (4)~~conference~~ *conferences* of State and Federal liquor control officials.

(f) The (5)~~Administrator~~ *commission* may, with the consent of the department or agency affected, utilize the services of any department or other agency of the Government to the extent necessary to carry out (6)~~his~~ *its* powers and duties and authorize officers and employees thereof to act as (7)~~his~~ *its* agents.

(g) The provisions, including penalties, of sections 9 and 10 of the Federal Trade Commission Act, as now or hereafter amended,

shall be applicable to the jurisdiction, powers, and duties of the (8) ~~Administrator~~ *commission*, and to any person (whether or not a corporation) subject to the provisions of laws administered by the (9) ~~Administrator~~ *commission*.

(h) The (10)~~Administrator~~ *commission* is authorized to require, in such manner and form as (11)~~he~~ *it* shall prescribe, such reports as are necessary to carry out (12)~~his~~ *its* powers and duties.

(13) *(i) The commission is authorized to make investigations and studies and to report thereon from time to time to the President and to the Congress, together with recommendations, with respect to matters necessary for the proper performance of the powers and duties conferred upon the commission, and with respect to the production, distribution, and consumption of alcoholic beverages, including monopolistic practices, unfair methods of competition, and concentration of ownership in the alcoholic beverages industries, and control of retail outlets and prices; advertising, labeling, and merchandising methods with respect to alcoholic beverages, including standards of identity, quality, and size and fill of container therefor; and enforcement of the twenty-first amendment, State and Federal cooperation in the administration of alcoholic beverage control laws, and methods of promoting temperance. The commission, whenever in its judgment such action will be in the public interest, may publish the results of such investigations and studies.*

(14) *(j) The commission shall make a report to Congress, at the beginning of each regular session, of the administration of the functions with which it is charged, and shall include in such report the names and compensation of all persons employed by the commission.*

UNLAWFUL BUSINESSES WITHOUT PERMIT

SEC. 3. In order effectively to regulate interstate and foreign commerce in (15)~~distilled spirits, wines, and malt beverages~~ *distilled spirits and wine*, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to (16) ~~distilled spirits, wine, and malt beverages~~ *distilled spirits and wine:*

(a) It shall be unlawful, except pursuant to a basic permit issued under this Act by the (17)~~Administrator~~ *commission*—

(1) to engage in the business of importing into the United States (18)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine;* or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, (19)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* so imported.

This subsection shall take effect sixty days after (20)~~the date of the enactment of this Act~~ *a majority of the commissioners first appointed take office.*

(b) It shall be unlawful, except pursuant to a basic permit issued under this Act by the (21)~~Administrator~~ *commission*—

(1) to engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce,

directly or indirectly or through an affiliate, distilled spirits or wine so distilled, produced, rectified, blended, or bottled, or warehoused and bottled.

This subsection shall take effect sixty days after (22)~~the date of the enactment of this Act~~ *a majority of the commissioners first appointed take office.*

(c) It shall be unlawful, except pursuant to a basic permit issued under this Act by the (23)~~Administrator~~ *commission*—

(1) to engage in the business of purchasing for resale at wholesale (24)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*; or

(2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce directly or indirectly or through an affiliate, (25)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* so purchased.

This subsection shall take effect (26)~~January~~ *March* 1, 1936.

This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under this Act.

PERMITS

SEC. 4. (a) The following persons shall, on application therefor, be entitled to a basic permit:

(1) Any person who, on May 25, 1935, held a basic permit as distiller, rectifier, wine producer, or importer issued by an agency of the Federal Government.

(2) Any other person unless the (27)~~Administrator~~ *commission* finds (A) that such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has, within five years prior to date of application, been convicted of a felony under Federal or State law (28) *or of a violation of any Federal law relating to liquor, including the taxation thereof*; or (B) that such person is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law; or (C) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted.

(b) If upon examination of any application for a basic permit the (29)~~Administrator~~ *commission* has reason to believe that the applicant is not entitled to such permit, (30)~~he~~ *the commission* shall notify the applicant thereof and, upon request by the applicant, afford him due notice and opportunity for hearing on the application. If the (31)~~Administrator~~ *commission*, after affording such notice and opportunity for hearing, finds that the applicant is not entitled to a basic permit hereunder, (32)~~he~~ *it* shall by order deny the application stating the findings which are the basis for (33)~~his~~ *its* order.

(c) The (34)~~Administrator~~ *commission* shall prescribe the manner and form of all applications for basic permits (including the facts to

be set forth therein) and the form of all basic permits, and shall specify in any basic permit the authority conferred by the permit and the conditions thereof in accordance with the provisions of this Act. To the extent deemed necessary by the (35)~~Administrator~~ *commission* for the efficient administration of this Act, separate applications and permits shall be required by the (36)~~Administrator~~ *commission* with respect to (37)~~distilled spirits, wine, and malt beverages~~ *distilled spirits and wine*, and the various classes thereof, and with respect to the various classes of persons entitled to permits hereunder. The issuance of a basic permit under this Act shall not operate to deprive the United States of its remedy for any violation of law.

(d) A basic permit shall be conditioned upon compliance with the requirements of section 5 (relating to unfair competition and unlawful practices) (38)*and of section 6 (relating to bulk sales and bottling)*, with the twenty-first amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to (39)~~distilled spirits, wine, and malt beverages~~ *distilled spirits and wine*, including taxes with respect thereto.

(40)~~(c) (1) No basic permit issued under this Act shall contain any condition prohibiting, nor shall any rule, regulation, or order, issued under this or any other Act of Congress, prohibit, the use or sale of any barrel, cask, or keg, if made of wood and if of one or more wine-gallons capacity, as a container in which to store, transport, or sell, or from which to sell, any distilled spirits, wine, or malt beverages. This subsection shall not apply to any condition in any basic permit issued under this Act or any rule, regulation, or order issued in connection therewith to the extent that such condition applies in a State in which the use or sale of any such barrel, cask, or keg is prohibited by the law of such State.~~

(41)~~(2) It shall be unlawful for any person to package or repackage distilled spirits for sale or resale in bottles unless such person is a distiller, a rectifier of distilled spirits, or a person operating a bonded warehouse qualified under the internal revenue laws or a class 8 bonded warehouse qualified under the customs laws, holding a basic permit under this Act, or is a proprietor of an industrial alcohol plant or is an agency of a State or political subdivision thereof: *Provided*, That any other person may so package distilled spirits in bottles if he qualifies under the internal revenue laws as a rectifier and holds a basic permit issued under this Act for the rectification of distilled spirits.~~

(42)~~(3) Notwithstanding the foregoing provisions of this subsection, no person who is subject to the occupational tax imposed by section 3244 "Fourth" of the Revised Statutes, as amended (U. S. C., Supp. VII, title 26, sec. 1394 (c)), on retail dealers in liquors shall package or repackage distilled spirits for sale or resale in bottles or be eligible to qualify as a rectifier of distilled spirits, and no such person, except a bona fide hotel or club, shall, for purposes of sale, remove from any such barrel, cask, or keg any distilled spirits contained therein. Any person who violates the provisions of this paragraph or paragraph (2) shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both, and shall forfeit to the United States all distilled spirits with respect to which the violation occurs, and the bottles in which packaged.~~

(43)~~(f)~~ (*e*) A basic permit shall by order of the (44)~~Administrator~~ *commission*, after due notice and opportunity for hearing to the permittee, (1) be revoked, or suspended for such period as the (45)~~Administrator~~ *commission* deems appropriate, if the (46)~~Administrator~~ *commission* finds that the permittee has willfully violated any of the conditions thereof, provided that for a first violation of the conditions thereof the permit shall be subject to suspension only; or (2) be revoked if the (47)~~Administrator~~ *commission* finds that the permittee has not engaged in the operations authorized by the permit for a period of more than two years; or (3) be annulled if the (48)~~Administrator~~ *commission* finds that the permit was procured through fraud, or misrepresentation, or concealment of material fact. The order shall state the findings which are the basis for the order.

(49)~~(g)~~ (*f*) Orders of the (50)~~Administrator~~ *commission* with respect to any denial of application, suspension, revocation, annulment, or other proceedings, shall be served (1) in person by any officer or employee of the (51)~~Administration~~ *commission* designated by the (52)~~Administrator~~ *commission* or any internal revenue or customs officer authorized by the (53)~~Administrator~~ *commission* for the purpose, or (2) by mailing the order by registered mail, addressed to the applicant or respondent at his last known address in the records of the (54)~~Administrator~~ *commission*.

(55)~~(h)~~ (*g*) A basic permit shall continue in effect until suspended, revoked, or annulled as provided herein, or voluntarily surrendered; except that (1) if leased, sold or otherwise voluntarily transferred, the permit shall be automatically terminated thereupon, and (2) if transferred by operation of law or if actual or legal control of the permittee is acquired, directly or indirectly, whether by stock-ownership or in any other manner, by any person, then such permit shall be automatically terminated at the expiration of thirty days thereafter: *Provided*, That if within such thirty-day period application for a new basic permit is made by the transferee or permittee, respectively, then the outstanding basic permit shall continue in effect until such application is finally acted on by the (56)~~Administrator~~ *commission*.

(57)~~(i)~~ (*h*) An appeal may be taken by the permittee or applicant for a permit from any order of the (58)~~Administrator~~ *commission* denying an application for, or suspending, revoking, or annulling, a basic permit. Such appeal shall be taken by filing, in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeal for the District of Columbia, within sixty days after the entry of such order, a written petition praying that the order of the (59)~~Administrator~~ *commission* be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon the (60)~~Administrator~~ *commission*, or upon any officer designated by (61)~~him~~ *it* for that purpose, and thereupon the (62)~~Administrator~~ *commission* shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the (63)~~Administrator~~ *commission* shall be considered by the court unless such objection shall have been urged before the (64)~~Administrator~~ *commission* or unless there were reasonable grounds for failure so to do. The finding of the (65)

~~Administrator~~ *commission* as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the (66)~~Administrator~~ *commission*, the court may order such additional evidence to be taken before the (67)~~Administrator~~ *commission* and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The (68)~~Administrator~~ *commission* may modify (69)~~his~~ *its* findings as to the facts by reason of the additional evidence so taken, and (70)~~he~~ *it* shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and (71)~~his~~ *its* recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the (72)~~Administrator~~ *commission* shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall, unless specifically ordered by the court (73)*to the contrary*, operate as a stay of the (74)~~Administrator's~~ *commission's* order.

(75)~~(j)~~ (*i*) No proceeding for the suspension or revocation of a basic permit for violation of any condition thereof relating to compliance with Federal law shall be instituted by the (76)~~Administrator~~ *commission* more than eighteen months after conviction of the violation of Federal law, or, if no conviction has been had, more than three years after the violation occurred; and no basic permit shall be suspended or revoked for a violation of any such condition thereof if the alleged violation of Federal law has been compromised by any officer (77) *or agency* of the Government authorized to compromise such violation.

UNFAIR COMPETITION AND UNLAWFUL PRACTICES

SEC. 5. It shall be unlawful for any person engaged in business as a distiller, (78)~~brewer,~~ rectifier, blender, or other producer, or as an importer or wholesaler, of (79)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate:

(a) Exclusive outlet: To require, by agreement or otherwise, that any retailer engaged in the sale of (80)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*, purchase any such products from such person to the exclusion in whole or in part of (81)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* sold or offered for sale by other persons in interstate or foreign commerce, if such requirement is made in the course of interstate or foreign commerce, or if such person engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such requirement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce; or

(b) "Tied house": To induce through any of the following means, any retailer, engaged in the sale of (82)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*, to purchase any such products from such person to the exclusion in whole or in part of (83)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such person engages in the practice of using such means, or any of them, to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce: (1) By acquiring or holding (after the expiration of any existing license) any interest in any license with respect to the premises of the retailer; or (2) by acquiring any interest in real or personal property owned, occupied, or used by the retailer in the conduct of his business; or (3) by furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs (84) (*excepting signs not exceeding $100 in aggregate value to any retailer in any calendar year*), supplies, money, services, or other thing of value, (85)*except advertising specialties and graphic arts advertising items of paper or paper-like substance and* subject to such (86)*further* exceptions as the (87)~~Administrator~~ *commission* shall by regulation prescribe, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest and the purposes of this subsection; or (4) by paying or crediting the retailer for any advertising, display, or distribution service; or (5) by guaranteeing any loan or the repayment of any financial obligation of the retailer; or (6) by extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions (88)~~, as ascertained by the Administrator and prescribed by regulations by him~~; or (7) by requiring the retailer to take and dispose of a certain quota of any of such products; or

(c) Commercial bribery: To induce through any of the following means, any trade buyer engaged in the sale of (89)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*, to purchase any such products from such person to the exclusion in whole or in part of (90)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such person engages in the practice of using such means, or any of them, to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce: (1) By commercial bribery; or (2) by offering or giving any bonus, premium, or compensation to any officer, or employee, or representative of the trade buyer; or

(d) Consignment sales: To sell, offer for sale, or contract to sell to any trade buyer engaged in the sale of (91)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*, or for any such trade buyer to purchase, offer to purchase, or contract to purchase, any such

products on consignment or under conditional sale or with the privilege of return or on any basis otherwise than a bona fide sale, or where any part of such transaction involves, directly or indirectly, the acquisition by such person from the trade buyer or his agreement to acquire from the trade buyer other (92)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*—if such sale, purchase, offer, or contract is made in the course of interstate or foreign commerce, or if such person or trade buyer engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such sale, purchase, offer, or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce (93)*: Provided, That this subsection shall not apply to transactions involving solely the bona fide return of merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold*; or

(e) Labeling.—To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any (94)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the (95)~~Administrator~~ *commission*, with respect to packaging, marking, branding, and labeling and size and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the (96)~~Administrator~~ *commission* finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof ((97)~~except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by State law and~~ except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or (98)~~importer of the product~~ *distributor of domestically bottled products and the manufacturer and importer of imported products*; (3) (99)~~as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification or in case of gin whether or not produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled; (1)~~ as will prohibit statements on the label that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; and (100)~~(5)~~ *(4)* as will prevent deception of the consumer by use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, and as will prevent the use of a graphic, pictorial, or emblematic representation of any such individual or organization, if

the use of such name or representation is likely falsely to lead the consumer to believe that the product has been indorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided*, That this clause shall not apply to the use of the name of any person engaged in business as a distiller, (101)~~brewer,~~ rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of (102)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*, nor to the use by any person of a trade or brand name used by him or his predecessor in interest prior to the date of the enactment of this Act; including regulations requiring, at time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported products (103)*: Provided further, That nothing herein nor any decision ruling or regulation of any Department of the Government shall deny the right of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent Office which has been used by such person or predecessors in the United States for a period of at least five years past.* (104)~~No person shall remove from Government custody after purchase at any Government sale any distilled spirits, wine, or malt beverages in bottles to be held for sale, until such bottles are packaged, marked, branded, and labeled in conformity with the requirements of this subsection.~~ (105)*The regulations of the commission shall prohibit the designation of any product as neutral spirits, or as any type of whisky or gin, for non-industrial use, if the neutral spirits contained therein are distilled from materials other than grain. Such regulations shall also require that the labels of all distilled spirits (other than cordials, liqueurs, and specialties) to which neutral spirits have been added by blending or rectification, and that the labels of all neutral spirits and of gin, for non-industrial use, whether produced by blending or rectification or by a process of continuous distillation, shall state thereon the percentage of neutral spirits contained therein, the name of the commodity or commodities from which such neutral spirits have been distilled, and the percentage thereof derived from each such commodity. As used herein, the term "neutral spirits" includes ethyl alcohol.*

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon (106)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except pursuant to regulations of the (107)~~Administrator~~ *commission* authorizing relabeling for purposes of compliance with the requirement of this subsection or of State law.

In order to prevent the sale or shipment or other introduction of (108)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection, no bottler, or importer of (109)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*, shall, after such date as the (110)~~Administrator~~ *commission* fixes as the earliest practicable date for the application of the provisions of this subsection to any class of such persons (but not later than (111)~~January~~ *March* 1, 1936, and only after thirty days' public notice), bottle or remove from customs custody for consump-

tion (112)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*, respectively, unless the bottler or importer, upon application to the (113)~~Administrator~~ *commission*, has obtained and has in his possession a certificate of label approval covering the (114)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*, issued by the (115)~~Administrator~~ *commission* in such manner and form as (116)~~he~~ *it* shall be regulations prescribe: *Provided*, That any such bottler shall be exempt from the requirements of this subsection if the bottler, upon application to the (117)~~Administrator~~ *commission*, shows to the satisfaction of the (118)~~Administrator~~ *commission* that the (119)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. Officers of internal revenue and customs are authorized and directed to withhold the release of such products from the bottling plant or customs custody unless such certificates have been obtained, or unless the application of the bottler for exemption has been granted by the (120)~~Administrator~~ *commission*. The district courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory, shall have jurisdiction of suits to enjoin; annul, or suspend in whole or in (121)~~part,~~ *part* any final action by the (122)~~Administrator~~ *commission* upon any application under this subsection; or

(f) Advertising: To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of (123)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine*, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations, to be prescribed by the (124)~~Administrator~~ *commission*, (1) as will prevent deception of the consumer with respect to the products advertised and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guaranties, and scientific or irrelevant matters as the (125)~~Administrator~~ * ~~*commission*~~ finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products advertised, the alcoholic content thereof ((126)~~except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are prohibited and~~ except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), and the person responsible for the advertisement; (3) (127)~~as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification or in case of gin whether or not produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled;~~ ~~(4)~~ as will prohibit statements that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; (128)~~(5)~~ (*4*) as will prevent statements inconsistent with any statement on the labeling of the products advertised. (129)

Such regulations shall require that the advertisement of any distilled spirits (other than cordials, liqueurs, and specialties) to which neutral spirits have been added by blending or rectification, and that the advertisement of any neutral spirits or of gin, for non-industrial purposes, whether produced by blending or rectification or by a process of continuous distillation, shall state the name of the commodity or commodities from which the neutral spirits contained therein have been distilled and the percentage thereof derived from each such commodity. This subsection shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising. (130) *The prohibitions of this subsection and regulations thereunder shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, rectifier, or other producer, or as an importer or wholesaler, of distilled spirits or wine, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate.*

The provisions of subsections (a), (b), and (c) shall not apply to any act done by an agency of a State or political subdivision thereof, or by any officer or employee of such agency.

The (131) ~~Administrator~~ *commission* shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing regulations to carry out the provisions of this section.

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* Ed. Note: This apparent error is found in the original print of the bill.

(132) *BULK SALES AND BOTTLING*

Sec. 6. (a) It shall be unlawful for any person—

(1) To sell or offer to sell, contract to sell, or otherwise dispose of distilled spirits in bulk except, under regulations of the commission, for export or to the following, or to import distilled spirits in bulk except, under such regulations, for sale to or for use by the following: A distiller, rectifier of distilled spirits, person operating a bonded warehouse qualified under the internal-revenue laws or a class 8 bonded warehouse qualified under the customs laws, a wine maker for the fortification of wines, a proprietor of an industrial alcohol plant, or an agency of the United States or any State or political subdivision thereof.

(2) To sell or offer to sell, contract to sell, or otherwise dispose of warehouse receipts for distilled spirits in bulk unless such warehouse receipts require that the warehouseman shall package such distilled spirits, before delivery, in bottles labeled and marked in accordance with law, or deliver such distilled spirits in bulk only to persons to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk.

(3) To bottle distilled spirits unless the bottler is a person to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk.

(b) Any person who violates the requirements of this section shall, upon conviction thereof, be fined not more than $5,000 or imprisoned for not more than one year or both, and shall forfeit to the United States all distilled spirits with respect to which the violation occurs and the containers thereof.

(c) *The term "in bulk" means in containers having a capacity in excess of one wine gallon.*

PENALTIES

SEC. (133)~~6~~ *7*. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States Court for any Territory, of the District where the offense is committed or threatened or of which the offender is an inhabitant or has his principal place of business, are hereby vested with jurisdiction of any suit brought by the Attorney General in the name of the United States, to prevent and restrain violations of any of the provisions of this Act. Any person violating any of the provisions of section 3 or 5 shall be guilty of a misdemeanor and upon conviction thereof be fined not more than $1,000 for each offense. Subject to the approval of the Attorney General, the (134)~~Administrator~~ *commission* is authorized, (135)~~prior to commencement of court proceedings~~ with respect to any violation of this Act, to compromise the liability arising with respect to such violation (1) upon payment of a sum not in excess of $500 for each offense, to be collected by the (136)~~Administrator~~ *commission* and to be paid into the Treasury as miscellaneous receipts, and (2) in case of repetitious violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation that the United States may, on its own motion upon five days' notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation.

INTERLOCKING DIRECTORATES

SEC. (137)~~7~~ *8*. (a) Except as provided in subsection (b), it shall be unlawful for any individual to take office, after the date of the enactment of this Act, as an officer or director of any company, if his doing so would make him an officer or director of more than one company engaged in business as a distiller, rectifier, or blender of distilled spirits, or of any such company and of a company which is an affiliate of any company engaged in business as a distiller, rectifier, or blender of distilled spirits, or of more than one company which is an affiliate of any company engaged in business as a distiller, rectifier, or blender of distilled spirits, unless, prior to taking such office, application made by such individual to the (138)~~Administrator~~ *commission* has been granted and after due showing has been made to (139)~~him~~ *it* that service by such individual as officer or director of all the foregoing companies of which he is an officer or director together with service in the company with respect to which application is made will not substantially restrain or prevent competition in interstate or foreign commerce in distilled spirits. The (140)~~Administrator~~ *commission* shall, by order, grant or deny such application on the basis of the proof submitted to (141)~~him~~ *it* and (142)~~his~~ *its* finding thereon. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States (143)~~courts~~ *court* for any Territory shall have jurisdiction of suits to enjoin, annul, or suspend (144)*in whole or in part* any final action by the (145)~~Administrator~~ *commission* upon any application under this subsection.

(b) An individual may, without regard to the provisions of subsection (a), take office as an officer or director of a company described

in subsection (a) while holding the position of officer or director of any other such company if such companies are affiliates at the time of his taking office and if—

(1) Such companies are affiliates on the date of the enactment of this Act; or

(2) Each of such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the law of such State; or

(3) One or more such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the laws of such State, and the other one or more of such companies not so organized, is in existence on the date of the enactment of this Act; or

(4) One or more of such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the law of such State, and not more than one of such companies is a company which has not been so organized and which has been organized after the date of the enactment of this Act.

(c) As used in this section, the term "company" means a corporation, joint stock company, business trust, or association, but does not include any agency of a State or political subdivision thereof or any officer or employee of any such agency.

(d) Any individual taking office in violation of this section shall be punished by a fine of not exceeding $1,000.

(146) *DISPOSAL OF FORFEITED DISTILLED SPIRITS AND WINE*

SEC. 9. Notwithstanding any provisions of existing law, distilled spirits and wine forfeited or condemned summarily or pursuant to court decree or otherwise, by or under any law of the United States, shall not be sold or otherwise disposed of publicly or privately but shall be destroyed at such time as such forfeiture or condemnation has become final; except that any such distilled spirits and wine certified by Government chemists to be of a quality equivalent to United States Pharmacopœia quality or to be suitable for medicinal purposes shall be placed in the custody of the United States Public Health Service and disposed of by the Surgeon General of such Service, in accordance with regulations to be prescribed by him, to hospitals operated or maintained in whole or in part by the United States, for use by them for medicinal purposes only.

FEDERAL ALCOHOL CONTROL ADMINISTRATION

SEC. (147) *10.* The Federal Alcohol Control Administration established by Executive order under the provisions of Title I of the National Industrial Recovery Act is hereby abolished. All papers, records, and property of such Federal Alcohol Control Administration are hereby transferred to the (148) ~~Administrator~~ *commission.* This section shall take effect (149) ~~on the date that the Administrator first appointed under this Act takes office~~ *when a majority of the commissioners first appointed under this Act have taken office.*

(U. S. C., Supp. VII, title 26, sec. 1310)

SEC. 11. That section 610 of the Revenue Act of 1918, as amended (U. S. C., Supp. VII, title 26, sec. 1310), is amended by adding at the end thereof the following new paragraph:

"The provisions of the internal-revenue laws applicable to natural wine shall apply in the same manner and to the same extent to citrus-fruit wines which are the product of normal alcoholic fermentation of the juice of sound ripe citrus fruit, with or without the addition of dry cane, beet, or dextrose sugar (containing, respectively, not less than 95 per centum of actual sugar, calculated on a dry basis) for the purpose of perfecting the product according to standards, but without the addition or abstraction of other substances, except as may occur in the usual cellar treatment of clarifying or aging."

SEC. 12. Section 612 of the Revenue Act of 1918, as amended (U. S. C., Supp. VII, title 26, sec. 1301), is amended to read as follows:

"SEC. 612. That under such regulations and official supervision and upon the giving of such notices, entries, bonds, and other security as the Commissioner, with the approval of the Secretary, may prescribe, any producer of wines defined under the provisions of this title, may withdraw from any fruit distillery or special bonded warehouse grape brandy, or wine spirits, for the fortification of such wines on the premises where actually made, and any producer of citrus-fruit wines may similarly withdraw citrus-fruit brandy for the fortification of citrus-fruit wines on the premises where actually made: Provided, That there shall be levied and assessed against the producer of such wines or citrus-fruit wines a tax (in lieu of the internal-revenue tax now imposed thereon by law) of 20 cents per proof gallon of grape brandy, citrus-fruit brandy, or wine spirit whenever withdrawn and hereafter so used by him in the fortification of such wines or citrus-fruit wines during the preceding month, which assessment shall be paid by him within ten months from the date of notice thereof: Provided further, That nothing contained in this section shall be construed as exempting any wines, citrus-fruit wines, cordials, liqueurs, or similar compounds from the payment of any tax provided for in this title.

"Any such wines or citrus-fruit wines may, under such regulations as the Secretary may prescribe, be sold or removed tax free for the manufacture of vinegar, or for the production of dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume.

"The taxes imposed by this section shall not apply to dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume."

SEC. 13. Section 613 of the Revenue Act of 1918, as amended (U. S. C., Supp. VII, title 26, sec. 1300 (a) (2)), is amended by inserting after "grape brandy" a comma and the following: "or containing citrus-fruit wine fortified with citrus-fruit brandy".

SEC. 14. Section 42 of the Act entitled "An Act to reduce the revenue and equalize duties on imports, and for other purposes", approved October 1, 1890, as amended (U. S. C., Supp. VII, title 26, sec. 1302 (a)), is amended by inserting at the end thereof the following new paragraph:

"The provisions of this section and section 43 shall apply to the use of citrus-fruit brandy in the preparation of fortified citrus-fruit wines in the same manner and to the same extent as such provisions apply to the use of wine spirits in the fortification of sweet wines, except that citrus-fruit wines and citrus-fruit brandy made with sugar as herein indicated may be used in fortification: Provided, That citrus-fruit brandy prepared

from one citrus fruit shall be used only for the fortification of a citrus-fruit wine prepared from the same kind of citrus fruit."

SEC. 15. Section 3255 of the Revised Statutes, as amended (U. S. C., Supp. VII, title 26, sec. 1176), is amended to read as follows:

"SEC. 3255. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may exempt distillers of brandy made exclusively from apples, peaches, grapes, oranges, pears, pineapples, apricots, berries, plums, pawpaws, persimmons, prunes, figs, cherries, or dates and distillers of citrus-fruit brandy made exclusively from citrus fruit, from any provision of this title relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: Provided, That where, in the manufacture of wine or citrus-fruit wine, artificial sweetening has been used the wine, citrus-fruit wine, or the fruit pomace residuum may be used in the distillation of brandy or citrus-fruit brandy, as the case may be, and such use shall not prevent the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, from exempting such distiller from any provision of this title relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: And provided further, That the distillers mentioned in this section may add to not less than five hundred gallons (ten barrels) of grape cheese not more than five hundred gallons of a sugar solution made from cane, beet, starch, or corn sugar, 95 per centum pure, such solution to have a saccharine strength of not to exceed 10 per centum, and may ferment the resultant mixture on a winery or distillery premises, and such fermented product shall be regarded as distilling material."

SEC. 16. Section 3246 of the Revised Statutes, as amended (U. S. C., Supp. VII, title 26, sec. 1394 (h), (i), and (j)), is amended to read as follows:

"SEC. 3246. Nothing in this chapter shall be construed to impose a special tax upon winemakers who sell wines of their own production where the same are made, or at the general business office of such winemaker: Provided, That no winemaker shall have more than one place of business for the sale of such wine that shall be exempt from the special tax. No special tax shall be imposed upon apothecaries as to wines or spirituous liquors which they use exclusively in the preparation or making up of medicines unfit for use for beverage purposes.

"No special tax shall be imposed upon manufacturing chemists or flavoring extract manufacturers for recovering tax-paid alcohol or spirituous liquors from dregs or marc of percolation or extraction, if such recovered alcohol or spirituous liquors be again used in the manufacture of like medicines or flavoring extracts."

(151) *SEC. 17. To prevent monopoly, and to facilitate financing through warehouse receipts issued by independently owned bonded warehouses qualified under the Internal Revenue Laws:*

(a) Section 1 of the Act of March 3, 1877 (19 Stat., 393; 26 U. S. C., 382), is amended by striking out the words, "not exceeding ten in number in any collection district", and by adding to said section, at the end thereof, the words: "The Commissioner of Internal Revenue, under such regulations as he may promulgate from time to time with the approval of the Secretary of the Treasury, may, in his discretion, establish such warehouses adjacent to distilleries, and may, in his discretion, permit the removal of brandy directly from the distillery to such warehouses, and

from such warehouses to the distillery warehouse of the producing distiller."

(b) Section 51 of the Act of August 27, 1894 (28 Stat., 564; U. S. C., 393), is amended by striking out the words: "not exceeding ten in number in any collection district", and by adding to said section, at the end thereof, the words: "The Commissioner of Internal Revenue, under such regulations as he may promulgate from time to time with the approval of the Secretary of the Treasury, may, in his discretion, establish such warehouses adjacent to distilleries, and may, in his discretion, permit the removal of spirits directly from the distillery to such warehouses, and from such warehouses to the distillery warehouse of the producing distiller."

(152) *SEC. 18. Title II of the Liquor Taxing Act of 1934 is amended to read as follows:*

"SEC. 201. (a) There shall be levied, collected, and paid upon all distilled spirits sold at retail a tax of $2 on each proof-gallon or wine-gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof- or wine-gallon.

"(b) No tax shall be imposed upon any distiller or importer under paragraph (4) of subdivision (a) of section 600, as amended, of the Revenue Act of 1918, in respect to any distilled spirits taxable under this section.

"SEC. 202. The internal-revenue tax imposed by the preceding section upon distilled spirits shall be collected from retailers, who shall affix to every bottle or other container of distilled spirits at the time of its first retail sale or retail transfer unopened in a container for on or off-premise consumption, and to every bottle or other container of distilled spirits out of which any part of the contents is removed for the purpose of retail sale, transfer, or use on or off the premises, before such container is opened, a stamp or stamps indelibly canceled, denoting the quantity of distilled spirits contained therein and evidencing payment of all internal-revenue taxes imposed on such spirits, and in the case of imported spirits, of all customs duties imposed thereon.

"SEC. 203. Any licensed retailer possessing or coming into possession of distilled spirits upon which all internal-revenue taxes and customs duties imposed by law shall have been paid, shall be entitled to purchase such stamps as are necessary for stamping the containers of distilled spirits in the manner required by the preceding section. Stamps for this purpose may be purchased by such retailer only from the collector of internal revenue for the revenue district in which such retailer's place or places of business for retail sales shall be located. Such retailer shall present satisfactory proof to such collector of internal revenue that such tax and customs duties on such distilled spirits have been paid. Such stamps shall be sold by the collector to such retailer at a price of 1 cent for each stamp, except that in case of stamps for containers of less than one-half pint, the price shall be one-fourth of 1 cent for each stamp.

"SEC. 204. No person shall manufacture, distill, rectify, import, transfer, or sell at wholesale or at retail any distilled spirits unless such person shall have furnished a surety-company bond given by a company, companies, or syndicate of companies approved by the Commissioner of Internal Revenue and guaranteeing the payment of all taxes and customs duties imposed by law on such distilled spirits, with such terms and conditions and in such penal sum as may be approved by said Commissioner. The provisions of this section shall not apply to any regularly

established common carrier receiving, transporting, delivering, or holding for transportation or delivery distilled spirits in the ordinary course of its business as a common carrier.

"SEC. 205. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe (a) regulations with respect to the time and manner of applying for, issuing, affixing, and canceling stamps required by this title, the form and denominations of such stamps, proof that applicants are entitled to such stamps, and the method of accounting for receipts from the sale of such stamps; and (b) such other regulations as he shall deem necessary for the enforcement of this title.

"SEC. 206. All distilled spirits found in any container required to bear a stamp by this title, which container is not stamped in compliance with this title and regulations issued thereunder, shall be forfeited to the United States.

"SEC. 207. Any person who violates any provision of this title, or who, with intent to defraud, falsely makes, forges, alters, or counterfeits any stamp made or used under this title, or who uses, sells, or has in his possession any such forged, altered, or counterfeited stamp, or any plate or die used or which may be used in the manufacture thereof, or any stamp required to be canceled by this title, or who makes, uses, sells, or has in his possession any paper in imitation of the paper used in the manufacture of any such stamp, or who reuses any stamp required by this title to be canceled, or who affixes any stamp issued under this title to any container of distilled spirits on which any tax is unpaid, or who makes any false statement in any application for stamps under this title, or who has in his possession any such stamps obtained by him otherwise than as provided in this title, or who sells or transfers any such stamp otherwise than as provided in this title, shall on conviction be punished by a fine not exceeding $1,000 or by imprisonment at hard labor not exceeding five years, or by both. Any officer authorized to enforce any provisions of law relating to internal-revenue stamps is authorized to enforce the provisions of this section and the provisions of section 7 of the Act of March 3, 1897, relating to the bottling of distilled spirits in bond."

(a) *This section shall take effect sixty days after the date of enactment of this Act.*

MISCELLANEOUS

SEC. ~~(153)~~ 9 *19.* (a) As used in this Act—

~~(154) (1) The term "Administrator" means the head of the Federal Alcohol Administration.~~

(1) The term "commission" means the Federal Alcohol Commission.

(2) The term "United States" means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means Alaska, Hawaii, and Puerto Rico.

(3) The term "interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or

between points within the same State but through any place outside thereof.

(4) The term "person" means individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof; and the term "trade buyer" means any person who is a wholesaler or retailer.

(5) The term "affiliate" means any one of two or more persons if one of such persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of the other or others of such persons; and any one of two or more persons subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

(6) The term "distilled spirits" means ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use.

(7) The term "wine" means (1) wine as defined in section 610 and section 617 of the Revenue Act of 1918, (U. S. C., title 26, secs. 441 and 444) as now in force or hereafter amended, and (2) other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake; in each instance only if containing not less than 7 per centum and not more than 24 per centum of alcohol by volume, and if for non-industrial use.

(155)~~(8) The term "malt beverage" means a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.~~

(156)~~(9)~~(8) The term "bottle" means any container, irrespective of the material from which made, for use for the sale of (157)~~distilled spirits, wine, or malt beverages~~ *distilled spirits or wine* at retail.

(b) The right to amend or repeal the provisions of this Act is expressly reserved.

(c) If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Amend the title so as to read: "An Act to further protect the revenue derived from distilled spirits and wine, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes."

Passed the House of Representatives July 24, 1935.

Attest: SOUTH TRIMBLE,
Clerk.

Passed the Senate with amendments July 29 (calendar day, August 13), 1935.

Attest: EDWIN A. HALSEY,
Secretary.

Appendix VI.—CONFERENCE REPORT AND STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE ON H.R. 8870

(Report No. 1898. Revenue from Distilled Spirits)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 8870) to further protect the revenue derived from distilled spirits, wine, and malt beverages; to regulate interstate and foreign commerce and enforce the postal laws with respect thereto; to enforce the twenty-first amendment, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 21, 23, 24, 25, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 76, 77, 78, 80, 81, 82, 83, 84, 85, 86, 87, 87½, 88, 89, 90, 91, 92, 94, 95, 96, 97, 98, 100, 101, 102, 105, 106, 107, 108, 109, 110, 112, 113, 114, 115, 116, 117, 118, 119, 120, 122, 123, 124, 125, 126, 128, 129, 131, 134, 136, 138, 139, 140, 141, 142, 145, 148, 149, 152, 154, 155, 156, and 157.

That the House recede from its disagreement to the amendments of the Senate numbered 4, 26, 38, 40, 41, 42, 43, 49, 55, 57, 73, 75, 93, 104, 111, 121, 133, 135, 137, 143, 144, and 147; and agree to the same.

Amendment numbered 14:

That the House recede from its disagreement to the amendment of the Senate numbered 14, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

(i) *The Administrator shall make a report to Congress, at the beginning of each regular session, of the administration of the functions with which he is charged, and shall include in such report the names and compensation of all persons employed by the Administration.*

And the Senate agree to the same.

Amendment numbered 20:

That the House recede from its disagreement to the amendment of the Senate numbered 20, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert *the date upon which the Administrator first appointed under this Act takes office*; and the Senate agree to the same.

Amendment numbered 22:

That the House recede from its disagreement to the amendment of the Senate numbered 22, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert *the date upon which the Administrator first appointed under this Act takes office*; and the Senate agree to the same.

Amendment numbered 28:

That the House recede from its disagreement to the amendment of the Senate numbered 28, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert *or has, within three years prior to date of application, been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof*; and the Senate agree to the same.

Amendment numbered 79:

That the House recede from its disagreement to the amendment of the Senate numbered 79, and agree to the same with an amendment as follows:

Omit the matter proposed to be inserted and restore the matter proposed to be stricken out by said amendment; and on page 22 of the House bill, after line 23, insert the following:

In the case of malt beverages, the provisions of subsections (a), (b), (c), and (d) shall apply to transactions between a retailer or trade buyer in any State and a brewer, importer, or wholesaler of malt beverages outside such State only to the extent that the law of such State imposes similar requirements with respect to similar transactions between a retailer or trade buyer in such State and a brewer, importer, or wholesaler of malt beverages in such State, as the case may be. In the case of malt beverages, the provisions of subsections (e) and (f) shall apply to the labeling of malt beverages sold or shipped or delivered for shipment or otherwise introduced into or received in any State from any place outside thereof, or the advertising of malt beverages intended to be sold or shipped or delivered for shipment or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the law of such State imposes similar requirements with respect to the labeling or advertising, as the case may be, of malt beverages not sold or shipped or delivered for shipment or otherwise introduced into or received in such State from any place outside thereof.

And the Senate agree to the same.

Amendment numbered 99:

That the House recede from its disagreement to the amendment of the Senate numbered 99, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be stricken out by said amendment insert the following: *as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits*

have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4); and the Senate agree to the same.

Amendment numbered 103:

That the House recede from its disagreement to the amendment of the Senate numbered 103, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert a colon and the following: *Provided further, That nothing herein nor any decision, ruling, or regulation of any Department of the Government shall deny the right of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent Office which has been used by such person or predecessors in the United States for a period of at least five years last past, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and, in the case of the use of such name or brand on any label or in any advertisement, if such qualification is as conspicuous as such name or brand;* and the Senate agree to the same.

Amendment numbered 127:

That the House recede from its disagreement to the amendment of the Senate numbered 127, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be stricken out by said amendment insert the following: *as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4)*; and the Senate agree to the same.

Amendment numbered 130:

That the House recede from its disagreement to the amendment of the Senate numbered 130, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert *The prohibitions of this subsection and regulations thereunder shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, brewer, rectifier, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate*; and the Senate agree to the same.

Amendment numbered 132:

That the House recede from its disagreement to the amendment of the Senate numbered 132, and agree to the same with an amendment, as follows: In the fifth line of said amendment strike out "Commission" and insert *Administrator*; and the Senate agree to the same.

Amendment numbered 146:

That the House recede from its disagreement to the amendment of the Senate numbered 146, and agree to the same with an amendment, as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

DISPOSAL OF FORFEITED ALCOHOLIC BEVERAGES

SEC. 9. (a) All distilled spirits, wine, and malt beverages forfeited, summarily or by order of court, under any law of the United States, shall be delivered to the Secretary of the Treasury to be disposed of as herein provided.

(b) The Secretary of the Treasury shall dispose of all distilled spirits, wine, and malt beverages which have been delivered to him pursuant to subsection (a)—

(1) By delivery to such Government agencies as, in his opinion, have a need for such distilled spirits, wine, or malt beverages for medicinal, scientific, or mechanical purposes; or

(2) By gift to such eleemosynary institutions as, in his opinion, have a need for such distilled spirits, wine, or malt beverages for medicinal purposes; or

(3) By destruction.

(c) No distilled spirits, wine, or malt beverages which have been seized under any law of the United States, may be disposed of in any manner whatsoever except after forfeiture and as provided in this section.

(d) The Secretary of the Treasury is authorized to make all rules and regulations necessary to carry out the provisions of this section.

And the Senate agree to the same.

Amendment numbered 150:

That the House recede from its disagreement to the amendment of the Senate numbered 150, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 11. Section 319 of the Revenue Act of 1918, as amended (U. S. C., Supp. VII, title 26, sec. 1319), is amended by adding at the end thereof the following new paragraph:

"The provisions of the internal-revenue laws applicable to natural wine shall apply in the same manner and to the same extent to citrus-fruit wines which are the product of normal alcoholic fermentation of the juice of sound ripe citrus fruit (except lemons and limes), with or without the addition of dry cane, beet, or dextrose sugar (containing, respectively, not less than 95 per centum of actual sugar, calculated on a dry basis) for the purpose of perfecting the product according to standards, but without the addition or abstraction of other substances, except as may occur in the usual cellar treatment of clarifying or aging."

SEC. 12. Section 312 of the Revenue Act of 1918, as amended (U. S. C., Supp. VII, title 26, sec. 1301), is amended to read as follows:

"SEC. 312. That under such regulations and official supervision and upon the giving of such notices, entries, bonds, and other security as the Commissioner, with the approval of the Secretary, may prescribe, any producer of wines defined under the provisions of this title may withdraw from any fruit distillery or special bonded warehouse grape brandy, or wine spirits, for the fortification of such wines on the premises where

actually made, and any producer of citrus-fruit wines may similarly withdraw citrus-fruit brandy for the fortification of citrus-fruit wines on the premises where actually made: Provided, That there shall be levied and assessed against the producer of such wines or citrus-fruit wines a tax (in lieu of the internal-revenue tax now imposed thereon by law) of 20 cents per proof gallon of grape brandy, citrus-fruit brandy, or wine spirit whenever withdrawn and hereafter so used by him in the fortification of such wines or citrus-fruit wines during the preceding month, which assessment shall be paid by him within ten months from the date of notice thereof: Provided further, That nothing contained in this section shall be construed as exempting any wines, citrus fruit wines, cordials, liqueurs, or similar compounds from the payment of any tax provided for in this title.

"Any such wines or citrus-fruit wines may, under such regulations as the Secretary may prescribe, be sold or removed tax free for the manufacture of vinegar, or for the production of dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume.

"The taxes imposed by this section shall not apply to dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume."

SEC. 13. Section 613 of the Revenue Act of 1918, as amended (U. S. C., Sup. VII, title 26, sec. 1300 (a) (2)), is amended by inserting after "grape brandy" a comma and the following: "or containing citrus-fruit wine ortified with citrus-fruit brandy."

SEC. 14. Section 42 of the Act entitled "An Act to reduce the revenue and equalize duties on imports, and for other purposes", approved October 1, 1890, as amended (U. S. C., Sup. VII, title 26, sec. 1302 (a)), is amended by inserting at the end thereof the following new paragraph:

"The provisions of this section and section 43 shall apply to the use of citrus-fruit brandy in the preparation of fortified citrus-fruit wines in the same manner and to the same extent as such provisions apply to the use of wine spirits in the fortification of sweet wines, except that no brandy (other than a citrus-fruit brandy) may be used in the fortification of citrus-fruit wine and a citrus-fruit brandy prepared from one kind of citrus fruit may not be used for the fortification of a citrus-fruit wine prepared from another kind of citrus fruit or for the fortification of a wine prepared from any fruit other than citrus fruit."

SEC. 15. Section 3255 of the Revised Statutes, as amended (U. S. C., Sup. VII, title 26, sec. 1176), is amended to read as follows:

"SEC. 3255. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may exempt distillers of brandy made exclusively from apples, peaches, grapes, oranges, pears, pineapples, apricots, berries, plums, pawpaws, persimmons, prunes, figs, cherries, dates, or citrus fruits (except lemons and limes) from any provision of the internal-revenue laws relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: Provided, That where, in the manufacture of wine or citrus-fruit wine, artificial sweetening has been used, the wine, or the fruit pomace residuum thereof, or the citrus-fruit wine may be used in the distillation of brandy or citrus-fruit brandy, as the case may be, and such use shall not prevent the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, from exempting such distiller from any provision of the internal-revenue laws relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: And provided further, That the distillers mentioned in this section may

add to not less than five hundred gallons (ten barrels) of grape cheese not more than five hundred gallons of a sugar solution made from cane, beet, starch, or corn sugar, 95 percentum pure, such solution to have a saccharine strength of not to exceed 10 per centum, and may ferment the resultant mixture on a winery or distillery premises, and such fermented product shall be regarded as distilling material."

And the Senate agree to the same.

Amendment numbered 151:

That the House recede from its disagreement to the amendment of the Senate numbered 151, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 16. (a) Section 1 of the Act of March 3, 1877, as amended (U. S. C., Supp. VII, sec. 1250), is amended by striking out "not exceeding ten in numbers in any one collection district," and by inserting at the end of such section the following new paragraph:

"The Commissioner of Internal Revenue, under such regulations as he may promulgate from time to time with the approval of the Secretary of the Treasury, may, in his discretion, establish such warehouses adjacent to distilleries, and may, in his discretion, permit the removal of brandy directly from the distillery to such warehouses, and from such warehouses to the distillery warehouse of the producing distiller."

(b) Section 51 of the Act of August 27, 1894, as amended (U. S. C., Supp. VII, sec. 1265), is amended by striking out "not exceeding ten in number in any one collection district," and by inserting at the end of such section the following new paragraph:

"The Commissioner of Internal Revenue, under such regulations as he may promulgate from time to time with the approval of the Secretary of the Treasury, may, in his discretion, establish such warehouses adjacent to distilleries, and may, in his discretion, permit the removal of spirits directly from the distillery to such warehouses, and from such warehouses to the distillery warehouse of the producing distiller."

And the Senate agree to the same.

Amendment numbered 153:

That the House recede from its disagreement to the amendment of the Senate numbered 153, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert *17*; and the Senate agree to the same.

That the Senate recede from its amendment to the title.

R. L. DOUGHTON,
SAMUEL B. HILL,
THOS. H. CULLEN,
ALLEN T. TREADWAY,
ISAAC BACHARACH,
Managers on the part of the House.

PAT HARRISON,
WILLIAM H. KING,
WALTER F. GEORGE,
ROBERT M. LA FOLLETTE, JR.,
JESSE H. METCALF,
Managers on the part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 8870) to further protect the revenue derived from distilled spirits, wine, and malt beverages; to regulate interstate and foreign commerce and enforce the postal laws with respect thereto; to enforce the twenty-first amendment, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon and recommended in the accompanying conference report:

Amendment no. 1: This amendment changes the short title of the act. The Senate recedes.

Amendment no. 2: The House bill created the Federal Alcohol Administration as a division in the Treasury Department. The Administration was to be headed by an Administrator appointed by the President, by and with the advice and consent of the Senate. Appointments of officers and employees by the Administrator were to be made without regard to the civil-service laws and the Classification Act of 1923, as amended, but their compensation was subject to the approval of the Secretary of the Treasury. All rules and regulations prescribed by the Administrator were subject to the approval of the Secretary of the Treasury. The Senate amendment establishes in lieu of the Federal Alcohol Administration provided in the House bill an independent agency to be known as the "Federal Alcohol Commission", to be composed of three Commissioners appointed by the President, by and with the advice and consent of the Senate. It provides that not more than two members of the Commission shall be members of the same political party. The amendment further provides that one of the Commissioners shall be chairman of the Commission and shall be its chief executive officer; another Commissioner shall be vice chairman of the Commission; and a third Commissioner, who shall be a lawyer, shall be general counsel of the Commission. Under the Senate amendment, appointments by the Commission are made without regard to the civil-service laws but subject to the Classification Act of 1923, as amended, and any officer or employee receiving a salary at the rate of $5,000 or more per annum is required to be appointed by the President, by and with the advice and consent of the Senate. All officers and employees of the Commission receiving less salary are to be appointed by the Commission and the Commission is to prescribe the duties of all its officers and employees irrespective of their method of appointment. The Senate recedes.

Amendments nos. 3, 5, 6, 7, 8, 9, 10, 11, 12, 17, 21, 23, 27, 29, 30, 31, 32, 33, 34, 35, 36, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 76, 77, 87, 95, 96, 107, 110, 113, 115, 116, 117, 118, 120, 122, 124, 125, 131, 134, 136, 138, 139, 140, 141, 142, 145, 148, 149, and 154: These amendments are clerical amendments made necessary by reason of Senate amendment no. 2. The Senate recedes in conformity with the action on amendment no. 2.

Amendment no. 4: This is a clerical amendment, and the House recedes.

Amendment no. 13: The Senate amendment authorizes the Commission to make investigations and studies with respect to various

phases of the alcoholic beverage industries, or with respect to matters necessary for the performance of its powers and duties, and to report thereon to the President and Congress from time to time, together with its recommendations. The House bill had no similar provision. The Senate recedes.

Amendment no. 14: The Senate amendment provides that the Commission shall make an annual report to Congress and include therein the names and compensation of all persons employed by the Commission. The House bill had no similar provision. The House recedes with an amendment placing such duties on the administrator.

Amendments nos. 15, 16, 18, 19, 24, 25, 37, 39, 78, 79, 80, 81, 82, 83, 89, 90, 91, 92, 94, 97, 101, 102, 106, 108, 109, 112, 114, 119, 123, 126, 155, and 157: The House bill covered beer and other malt beverages, and its provisions applied to brewers and importers and wholesale distributors of such malt beverages, except that brewers were exempt from the provisions of the House bill requiring basic permits. The effect of these Senate amendments is to exempt brewers, importers, and wholesale distributors of malt beverages from all provision of the bill.

The conference agreement retains the provision of the House bill under which importers and wholesalers of malt beverages are required to have permits. The conference agreement applies the trade practices provisions of the bill to malt beverages with a modification under which such provisions are to apply to transactions between a brewer or other distributor outside a State and a retailer or trade buyer in a State only to the extent that the State imposes similar requirements on the same classes of persons and with respect to the same transactions within the State, and under which the requirements of the bill with respect to labeling and advertising are to apply to persons outside the State in respect of their products shipped into or advertised in a State only to the extent that the State imposes similar requirements in similar cases within the State. The conference action to accomplish this result consists of the House receding with an amendment on amendment no. 79 and the Senate receding on all the other amendments.

Amendments nos. 20 and 22: Under the House bill the requirement that importers, and persons engaged in the business of distilling spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling or warehousing and bottling distilled spirits, must have a basic permit to engage in operations, became effective 60 days after the enactment of the act. The Senate amendment provides that these requirements shall be effective 60 days after such date as the majority of the commission first appointed takes office. The House recedes on both amendments with amendments changing "Commission" to "Administrator".

Amendment no. 26: The House bill provided that the requirement that wholesale distributors must have a basic permit to engage in operations should take effect January 1, 1936. The Senate amendment provides that this requirement shall take effect March 1, 1936. The House recedes.

Amendment no. 28: The House bill provided that applicants for a basic permit (other than those entitled thereto as a matter of right) should not be entitled to the permit if it were found that the applicant

had within 5 years prior to the date of application been convicted of a felony. The Senate amendment adds an additional requirement that the applicant must not have been convicted, in such period, of a violation of a Federal law relating to liquor, including the taxation thereof, irrespective of whether the violation constituted a felony. The House recedes with an amendment providing that the applicant must not have been convicted, within a period of 3 years prior to date of application, of a misdemeanor under any Federal law relating to liquor, including the taxation thereof.

Amendments nos. 38, 40, 41, 42, and 132: The House bill provided that distilled spirits could be distributed without restriction in barrels, casks, or kegs made of wood, if the container had a capacity of 1 wine gallon or more. This authority was, however, subject to an exception in the case of distribution into those States in which the use or sale of any such barrel, cask, or keg is prohibited by the law of the State. The House bill further provided that a recipient of bulk goods should not be entitled to package or repackage the bulk distilled spirits for sale or resale in bottles or other containers intended to reach the consumer, unless the bottler was a distiller, rectifier of distilled spirits, a person operating a bonded warehouse qualified under the internal-revenue laws, or a class 8 bonded warehouse qualified under the customs laws, holding a basic permit, or was a proprietor of an industrial alcohol plant, or was an agency of a State or any political subdivision thereof. The House bill further provided that a recipient of bulk distilled spirits should not dispense the distilled spirits for sale unless such person was a bona fide hotel or club. Specific provision was also made in the House bill recognizing that a wholesaler of distilled spirits could qualify as a rectifier but prohibiting a retailer from so qualifying.

Senate amendments numbered 40, 41, and 42 strike out the House provisions. Senate amendment numbered 132 makes it unlawful for any person to sell or offer to sell, contract to sell, or otherwise dispose of distilled spirits in containers having a capacity in excess of 1 gallon, except under regulations of the Commission for export, or to a distiller or rectifier (including a wholesaler who qualifies as a rectifier) of distilled spirits, person operating a bonded warehouse under the internal-revenue laws or a class 8 bonded warehouse qualified under the customs laws, a wine maker for the fortification of wines, a proprietor of an industrial alcohol plant, or an agency of the United States or any State or political subdivision thereof. The Senate amendment also makes it unlawful for any person to import distilled spirits in bulk unless he is one of the list above specified or unless for sale to or use by one of such persons. The Senate amendment further makes unlawful transactions in warehouse receipts covering spirits in bulk unless the particular receipt includes among its terms a requirement that the warehouseman shall, before delivery of the distilled spirits, pursuant to the delivery of the receipt, package them in bottles, labeled and marked in accordance with law, or deliver them in bulk only to persons to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk; i. e., the persons in the list above specified. The Senate amendment further provides that it is unlawful for any person to bottle distilled spirits, or package or repackage distilled spirits in bottles, unless the bottler is a person to whom it is lawful to sell or

otherwise dispose of distilled spirits in bulk; i. e., a person in the list above specified. A criminal penalty of $5,000 or imprisonment for not more than 1 year, or both, is provided for the violation, and all distilled spirits and the containers thereof with respect to which a violation occurs are forfeited to the United States.

Senate amendment numbered 38 makes observance of the bulk sales requirements as set forth in Senate amendment numbered 132 a condition of a basic permit issued under the bill. The House recedes on amendments numbered 38, 40, 41, and 42, and recedes with an amendment on 132, changing "Commission" to "Administrator"

Amendments nos. 43, 49, 55, 57, and 75: These are clerical amendments changing paragraph letters. The House recedes.

Amendment no. 73: This is a clarifying amendment, and the House recedes.

Amendment no. 84: This amendment excepts from the tied-house prohibitions signs not exceeding $100 in aggregate value to any retailer in any calendar year. There is no corresponding exception in the House bill. The Senate recedes.

Amendments nos. 85 and 86: Amendment no. 85 excepts from the tied-house prohibitions "advertising specialties and graphic arts advertising items of paper or paperlike substance." Amendment no. 86 makes a clerical amendment in connection with amendment no. 85. The Senate recedes.

Amendment no. 87½: The House bill provided in the tied-house prohibition that credit in excess of the period usual and customary to the industry for the particular class of transactions could not be extended to the retailer. The Senate amendment strikes out "to the industry". The Senate recedes.

Amendment no. 88: The House bill provided that the tied-house prohibition against excessive credits to retailers should be subject to regulations of the enforcement agency. The Senate amendment strikes out the requirement as to regulations. The Senate recedes.

Amendment no. 93: This amendment provides that the restrictions in the "consignment sales" subsection shall not apply to transactions involving solely the bona fide return of merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold. The House bill contained no corresponding provision. The House recedes.

Amendment no. 98: The House bill provided that the regulations of the enforcement agency as to informative labeling should provide the consumer with adequate information as to the manufacturer or bottler or importer of the particular product. The Senate amendment provides that in case of domestically bottled goods the regulation shall require the label to show the name of the manufacturer or bottler or distributor, and, in the case of imported products, show the name of the foreign manufacturer and the domestic importer. The Senate recedes.

Amendments nos. 99, 100, 105, 127, 128, and 129: The House bill provided that the regulations of the enforcement agency with regard to the informative labeling and advertising of distilled spirits provide that in the cases of distilled spirits (other than cordials, liqueurs, and specialties) there be stated on the label or in the advertisement, as the case might be, the percentage of the neutral spirits used in the production thereof and the name of the commodity from which the

neutral spirits were distilled. The provision applied to distilled spirits produced by blending or rectification and to gin, whether produced by blending or rectification or by process of continuous distillation. The provisions did not apply to straight neutral spirits or alcohol produced by process of continuous distillation. The Senate amendments incorporate clarifying provisions making it certain that the informative requirements apply to gin produced by process of continuous distillation, as well as by blending or rectification and also extend the requirements to straight neutral spirits or alcohol produced by process of continuous distillation. In addition, the Senate amendment makes it clear that it is mandatory upon the enforcement agency to issue regulations of this informative character and that in case neutral spirits made from two different commodities are included in the product then the percentage made from each such commodity shall be stated.

Senate amendment no. 105 further provides that the regulations of the Commission with respect to labeling and standards of identity shall prohibit the designation of any product as neutral spirits or as any type of whisky or gin, *or nonindustrial use, if the neutral spirits used in making the product are distilled from materials other than grain. This requirement applies to neutral spirits, whisky and gin produced by a process of continuous distillation, as well as to gin or any type of blended or other whisky produced by blending or rectification. The Senate amendment further provides by definition that the term "neutral spirits", where used throughout the act, is synonymous with ethyl alcohol.

The Senate recedes on amendments nos. 105 and 129 which make the regulations mandatory and which prohibit designation of whisky, neutral spirits, or gin, as such, unless produced from grain. The Senate recedes on amendments nos. 100 and 128 which make changes in numbers in connection with amendments nos. 105 and 129. The effect of the conference agreement is to insert the substance of the House provisions with the addition thereto of provisions similar to those in Senate amendments nos. 105 and 129 under which the requirement is imposed that there be a statement of the commodity from which neutral spirits or gin produced by continuous distillation is produced.

Amendment no. 103: This amendment provides that nothing in the act or any decision, ruling, or regulation of any Department of the Government shall deny the right of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent Office which has been used by such person or predecessors in the United States for a period of at least 5 years last past. The House bill had no corresponding provision. The House recedes with an amendment inserting the substance of the Senate provision but adding a limitation that if such a name or brand is used its use must be qualified by the name of the locality in the United States in which the product is produced and on labels and in advertising this qualification must be as conspicuous as the name or brand itself.

* Ed. Note: This apparent error is found in the original print of the report.

Amendments nos. 104 and 146: The House bill provided that no person should remove from Government custody after purchase at a Government sale any distilled spirits, wine, or malt beverages in bottles to be held for sale, until such bottles are packaged, marked, branded, and labeled in conformity with the labeling requirements of the bill. Senate amendment no. 104 strikes out these provisions. Senate amendment no. 146 provides that distilled spirits and wine forfeited or condemned shall not be sold, or otherwise disposed of, but shall be destroyed; except that any such distilled spirits and wine certified by Government chemists to be of a quality equivalent to United States Pharmacopoeia quality or suitable for medicinal purposes shall be disposed of by the Surgeon General of the United States Public Health Service to hospitals operated or maintained in whole or in part by the United States, for use by them for medicinal purposes only.

The conference agreement on amendment no. 146 inserts a provision under which distilled spirits, wine, and malt beverages forfeited summarily or by order of court are to be delivered to the Secretary of the Treasury. He is to dispose of them by delivering them to Government agencies for medicinal, scientific, or mechanical purposes, but if they have no need for them, by giving them to charitable institutions for medicinal purposes. Any articles which are not so disposed of are to be destroyed by the Secretary of the Treasury. Previous contrary authorizations are repealed and the Secretary is given power to prescribe rules and regulations to carry out the section.

The House recedes on amendment no. 104 relating to labeling after Government sale in view of the insertion of the provision prohibiting Government sales.

Amendment no. 111: The House bill provided that the requirements for certificates of label approval should become effective not later than January 1, 1936. The Senate amendment provides that these requirements shall become effective not later than March 1, 1936. The House recedes.

Amendment no. 121: This is a clerical amendment. The House recedes.

Amendment no. 130: This is a clarifying amendment and makes certain that the prohibi tions with regard to false advertising and the requirements as to informative advertising shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster unless such publisher or radio broadcaster is engaged in publishing the newspaper, periodical, or other publication, or in transmitting radio broadcasts, is engaged in the distilled spirits or wine industry, directly or indirectly. The House recedes with an amendment applying similar provisions in the case of malt beverages.

Amendments nos. 133, 137, 147, and 153: These are clerical amendments changing section numbers. The House recedes on 133, 137, and 147, and with an amendment making a further change in the number on 153.

Amendment no. 135: The House bill provided that violations of the act could be compromised by the enforcement agency at any time prior to the commencement of court proceedings with respect to the violation. The Senate amendment provides this power of compromise can be exercised either before, pending, or after completion of court proceedings. The House recedes.

Amendments nos. 143 and 144: These are clerical amendments, and the House recedes.

Amendment no. 150: The Senate amendment applies to citrus-fruit wines the provisions of internal-revenue laws applicable to "natural" grape wine. It also permits the withdrawal of citrus-fruit brandy and use of it for the fortification of citrus-fruit wine—applying in such case the same tax (20 cents a proof gallon) as in the case of grape brandy for fortification of grape wine. The amendment makes the necessary amendment to the provisions of law under which liqueurs, cordials, or similar compounds are taxed if grape brandy is used therein so that these provisions will apply with respect to citrus-fruit wines fortified with citrus-fruit brandy. The amendment makes applicable to the fortification of citrus-fruit wines with citrus-fruit brandy the provisions of law relating to fortification of grape wines with grape brandy but limits the provision so that a citrus-fruit brandy may be used only for the fortification of a citrus-fruit wine produced from the same fruit, e. g., orange brandy may be used only for fortification of orange wine. Citrus-fruit brandy distillers and date brandy distillers may be exempted by the Secretary of the Treasury from certain provisions of law relating to the manufacture of such brandies as in the case, under present law, of distillers of apple brandy and other fruit brandy distillers.

The amendment also exempts citrus-fruit wine makers and other wine makers (in the same manner as in the case of grape wine makers) from the special tax upon wine makers if they sell wines of their own production where they are made or at the wine maker's general business office.

The amendment also makes clear that where manufacturing chemists or flavoring extract manufacturers use recovered alcohol or spirits, they may be again used only in the making of medicines or flavoring extracts of the same kind in which they are first used.

The House recedes with an amendment which makes clarifying changes and which excepts lemons and limes from the application of the Senate provision. The conference agreement also omits the provisions relating to business offices of a wine maker and to the use of recovered alcohol in flavoring extracts and medicines.

Amendment no. 151: This amendment strikes out the limitation on the number of warehouses which the Commissioner of Internal Revenue may establish in any one collection district for the storage of fruit brandies and spirits distilled from materials other than fruit. It also provides that in the discretion of the Commissioner of Internal Revenue such warehouses may be established adjacent to distilleries, and further that he may in his discretion permit the removal of brandies and spirits, as the case may be, directly from the distillery to such warehouses, and from such warehouses to the distillery warehouse of the producing distiller. The House recedes with an amendment which omits the preamble and makes clerical changes.

Amendment no. 152: This amendment changes the method of levying and collecting the tax on distilled spirits. Under the present law, the tax is paid by the distiller or importer. The amendment imposes the tax on the retailer and provides that it shall be collected at the time of its first retail sale. The retailer is required to affix to the bottle or other container of distilled spirits stamps denoting the quantity

contained therein and evidencing payment of all internal-revenue taxes, and of all customs duties. The amendment further provides that no person shall manufacture, distill, import, or sell at wholesale or retail any distilled spirits unless such person furnishes a bond guaranteeing the payment of all taxes and customs duties imposed thereon. The Senate recedes.

Amendment no. 156: This is a clerical amendment changing the paragraph number. The Senate recedes.

The Senate amended the title of the bill to conform to the Senate amendment eliminating malt beverages from the bill. The Senate recedes.

R. L. Doughton,
Samuel B. Hill,
Thos. H. Cullen,
Allen T. Treadway,
Isaac Bacharach,
Managers on the part of the House.